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United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN THREE VOLUMES.)

THE UNITED STATES OF AMERICA,

Appellant,

vs.

CALIFORNIA MIDWAY OIL COMPANY, ASSO-
CIATED OIL COMPANY, COLUMBUS
MIDWAY OIL COMPANY, 32 OIL COM-
PANY, L. B. McMURTRY, J. M. McLEOD,
and STANDARD OIL COMPANY,

Appellees.

VOLUME II.

(Pages 385 to 704, Inclusive.)

Upon Appeal from the United States District Court
for the Southern District of California,
Northern Division.

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F. D. MONCKTON,
CLERK.

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Northern Division.

(Deposition of Samuel R. Banks.)

Q. At the time you signed Government's Exhibit No. 21, did you receive any money or thing of value?

A. I received a check for \$250, or in cash, I don't know which one it was—yes, it was a check, and I got the cash for it. Q. I now invite your attention to a check which is substantially as follows:

"No. 109. New York, September 23, 1910.

"SECOND NATIONAL BANK

of the City of New York,

"Pay to the order of Samuel R. Banks, Two hundred and fifty dollars.

\$250.

F. H. SEARLS."

and on the reverse thereof is the following in typewriting:

"Received from L. B. McMurtry \$250.00, in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 21st day of December, 1907."

That is the end of the typewriting, and it is signed below, "Samuel R. Banks." Is that your signature? A. That is my signature. Q. Is that the check to which you referred in your last answer? A. Yes, I believe it is. Q. Was the typewriting [343—237] I have referred to on the back at the time you signed it? A. I don't recollect, but I think it was. Q. Did you read that before you signed it? A. It if was there, I prob-

(Deposition of Samuel R. Banks.)

ably read it. Think McMurtry presented this check to me for my signature at one of the hotels, the Knickerbocker or the Waldorf. No one was present other than Thorn and McMurtry. Don't recall what was said.

Q. Why did you sign your name on the back of that check. A. I believed at that particular time that that \$250 was a payment from the moneys that they had received for oil that they had located on the property.

Received cash there in the room for the check that I signed. The next paper I recall signing was I think a certificate of stock, or something.

Q. I invite your attention now to the certificate No. 26, which is found in the original stock book of the Pacific Oil Lands Company, which recites on its face: This certifies that Samuel R. Banks is the owner of 1000 shares of the capital stock of the Pacific Oil Lands Company. Is that the certificate you have just referred to? A. Yes, I think it is.

Q. I invite your attention also to the receipt pasted on the stub of certificate No. 26, which is as follows:

“Received certificate No. 26 for 1000 shares of the Pacific Oil Lands Company,” date September 18, 1911, “Samuel R. Banks.”

Is that your signature? A. Yes. Q. Do you remember having signed that receipt? A. Yes, I signed it. Don't recall who delivered this certificate to me. Think I kept it until 1912. [344—238]

Q. I invite your attention now to a certificate on

(Deposition of Samuel R. Banks.)

the back of this stock, dated New York, November 21, 1911, the certificate being as follows: "For value received ——— hereby sells, assigns, and transfers unto ——— shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint ——— to transfer the said stock on the books of the within named corporation, with full power of substitution in the premises. Dated November 21, 1911, and signed "Samuel R. Banks," in the presence of T. J. Gil. Do you recognize that signature of Samuel R. Banks as yours? A. I do. In signing that I was transferring the stock over to someone else and delivered this certificate to Searls as an outright sale. To the best of my recollection, I received \$150 for it. Have no recollection of receiving any money from the Pacific Oil Lands Company since that, or hearing further from these oil land transactions outside of receiving a pamphlet or book, I think, relating to the oil lands in the particular locality there, or something like that—I don't know just what it was. That was some time after I signed the paper, according to my recollection.

Q. I invite your attention to three typewritten sheets, which are headed "Pacific Oil Lands Company. First Report to Stockholders." Did you receive a copy of that—is that what you refer to?

A. I believe I have heard of this paper. Whether I read it,—I think I have a slight recollection of reading something like that. Q. (Question repeated.) A. I think I did. Q. Do you know when

(Deposition of Samuel R. Banks.)

you received that? A. No, I do not, I have no recollection of that. Q. Was it before or after you signed the certificate of November 21, 1911? A. I think it [345—239] was after.

Don't remember signing any papers in connection with the land matters after November 21, 1911, or receiving any money at the time I delivered this certificate No. 26 to Searls on November 21, 1911. I went to Mr. Searls' office when he was up with, I think, Baumgarten & Company, up here in Fifth Avenue somewhere, and I told him I had this Pacific Oil Lands stock, and that I knew he was somewhat interested in it, in the companies out there, and I asked him if I could sell it. I think I tried to find out at the time through a broker down town whether it was worth anything or not. I don't know whether any—I don't think I found out anything about it, that is, it was not listed, and I did not get the information, so then I went to him, and I asked him what it was worth, and I told him I needed some money right away, that I was pressed for cash, and I was broke at that time—not now—and he asked me what I would take for it, and I think I told him I wanted,—I think it was \$150, I don't know whether I said \$150 or \$200, but I needed it right away, and he said he would give it to me, and I said, "All right, take it." Don't recall any conversation with anyone at the time this stock was originally handed to me.

Q. At the time when you parted with the possession of certificate No. 26, to Mr. Searls, on Novem-

(Deposition of Samuel R. Banks.)

ber 21, 1911, did you know how many locations of oil land claims had been made by Mr. L. B. McMurtry, in the State of California, or elsewhere as your attorney in fact, under the power of attorney, dated December 21, 1907, upon which your name appeared as a locator? A. You mean the number of locators. Q. The number of locations that were made? A. Made under my particular name? [346—240] Q. Yes. I think there was something said about him locating under my name one location or tract, or something. Q. Who told you that? A. I think Mr. Thorn told me that. Q. Do you remember when it was he told it to you? A. No, I do not. He used to see me from time to time. Q. At the time you parted with the possession of certificate No. 26, did you know what area of the public domain had been located by Mr. McMurtry acting under this power of attorney upon which your name appeared, as one of the locators? A. I think there was something like twenty acres. Q. Who advised you of that fact? A. Mr. Thorn, I think. Q. Do you remember when it was he told you that? A. No, I do not recall. Q. At the time you parted with the possession of certificate No. 26, did you know the state of development of any oil lands that had been located by Mr. McMurtry, and upon which locations your name appeared as locator? A. If he had located any? Q. No, I mean what work, looking to the discovery of oils or other minerals, had been performed upon the land? A. I had been informed

(Deposition of Samuel R. Banks.)

that they had sunk a number of wells, and located oil. Q. And who was your informant? A. Mr.

Thorn. Q. At the time you parted with the possession of certificate No. 26, did you know what had been done by Mr. McMurtry, and by Mr. Herrin and his associates, pursuant to the contract of August 4, 1910, or his supplemental contract of August 6, 1910, or any other contracts between Mr. McMurtry and Mr. Herrin and his associates? A. Did

I know anything about the contracts, or what had been done on the lands? Q. Did you know any-

thing about either? A. Well, I had been told from time to time that they had located oil, and that there had been some kind of contracts made with some concerns regarding the disposal of their oil.

Q. Did you ever make any inquiry yourself in regard to the [347—241] *the* condition of affairs with respect to these oil lands? A. I think I did, asked Mr. Thorn how the things were coming on out there, and as to the prospects of its development, when I had seen him from time to time, and I think he informed me the prospects were good.

That is my recollection. Q. Did you ever advance any money for the purpose of developing oil on any of these lands? A. No. Q. Were you ever asked

to advance any money for that purpose? A. I don't believe so, no. Q. At the time you signed the

first paper with respect to these oil land matters, was there any advice given you as to what expenses you would be likely to incur on account of signing

(Deposition of Samuel R. Banks.)

the papers? A. I cannot recall any conversation of that kind.

Cross-examination.

No, in giving McMurtry power or attorney did limit him as to number of locations he was to make in my name. Yes, when I was referred to 20 acres of land I meant it was my understanding that an individual could locate only 20 acres in one location. No, never repudiated this power of attorney. No, nothing was said to me when I signed this power of attorney by anybody to the effect that they wanted to use my name, for they wanted to use my name for the benefit of McMurtry or anybody else, and I never signed any paper to that effect or to the effect that McMurtry or anybody else was the owner of the claims located in my name, or any part of the location made in my name. No, did not intend to defraud the Government or aid or assist to do so. Yes, I executed this power of attorney in good faith. I never rescinded it to my knowledge. Yes, at the time I signed the ratification this power of attorney was in full force.

Q. You then, if never before, received direct knowledge [348—242] that your power of attorney had been recorded in Kern County, Cal.? A. I believe I did, yes. No, at the time I signed that ratification no one offered me money to sign it, nor was I told that it was necessary to have that paper ratified because of demands made by the lawyers in California representing the other parties. To the best of my recollection, Thorn presented that

(Deposition of Samuel R. Banks.)

ratification for my signature. No, I am not sure that it was not McMurtry. Yes, I believe there was something said about a contract at that time, or a deal, or something of that kind. It was either McMurtry or Thorn who later gave me the check for \$250.

Q. See whether this refreshes your memory; that he had a bunch of ratifications from all or nearly all of the thirty-two locators of these lands, and that he thought these contracts would then come on with Mr. Herrin, or the Associated Oil Company, and that in order to properly swing this thing, he said himself, or if it was not him, Thorn said, that McMurtry was going to organize a corporation for and on behalf of the locators, and transfer the contracts to the corporation, and to that end he wanted you and every other locator to sign a transfer to him of your interest in the located lands, so that the corporation could be properly formed,—did you have any talk of that kind with him? A. Yes, I believe there was some talk of that kind, along those lines.”

My recollection is that I signed the ratification first and later received the check, and then the stock. Yes, the stock came nearly a year after I signed that transfer to McMurtry. Q. And the paper that you also say you saw or read shows these properties and these contracts were transferred to the company, the ownership of the various people whom he thought were interested by reason of the locations and services rendered. Now, does the fact

(Deposition of Samuel R. Banks.)

that I [349—243] have called to your attention, with these circumstances, and the times and other happenings, the date and the instruments, refresh your memory in any way so that you can state that you were told at the time you signed that transfer and received that check and that money, that you were still to receive a further interest because of your interest in those lands? A. I believe I was.

Don't at all recall what was said when I received the stock. Yes, I believe the stock was given me because I was supposed to be entitled to it as a matter of right because of my transfer of my interest in the land. Don't recall who gave me the stock or took the receipt from me, but think it was Thorn. It may have been mailed to me. Yes, I believe it had reference to the locations made by McMurtry in my name. When I use the expression "I believe," I am stating what is now my best recollection. When I went to see Searls about disposing of this stock he said he thought I would be foolish to part with it or, something of that kind, I don't recollect what it was, but there was no question about that, I told him I came up to see him and wanted to see if I could get some money for it. Yes, I believe this was about my only asset at that time. [350—244]

Deposition of Frederick S. Thorn, for Plaintiff.

FREDERICK S. THORN, called April 20, 1917, on behalf of the plaintiff, testified by deposition as follows:

Reside at 315 Webster Avenue, Jersey City

(Deposition of Frederick S. Thorn.)

Heights. Am a straw-hatter, with Young Brothers on 23d Street. Am a brother of C. W. Thorn. In December, 1907, resided in West Hoboken, Jersey City Heights, just above Jersey City Heights, New Jersey, and was working at 691 Broadway, Charles Levy & Sons, in the same line of business,

I signed this power of attorney (Plaintiff's Exhibit 5), through my brother Charles, who acquainted me in regards to it, about a week before. He stated to me that Mr. McMurtry was a capable man in oil, prospecting, and if we would, or if I would rather, sign this paper, a power of attorney that he possibly could find oil lands out there that would in the future be worth something. There were present at the time Charles my nephew Harry B. Thorn, and several others whose names I don't remember; also the notary, McTigue. The next I heard of this ratification was in 1910, when they wanted us to sign a ratification.

(Plaintiff's Exhibit 22 with this deposition is a ratification similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman and purports to have been executed by Frederick S. Thorn, August 15, 1910.)

Plaintiff's Exhibit 22 is a copy of the ratification referred to and bears a photographic copy of my signature. I saw a photographic copy of this ratification a week ago. Mr. Brann showed [351—245] it to me. I believe Mr. McTigue presented this original to me for signature. I understood that, to the best of my recollection, Mr. McMurtry was try-

(Deposition of Frederick S. Thorn.)

ing to dispose of some of the land, in some way to this party, Herrin, and they wished to know if we were *bona fide* locators, and sent on for our ratification. My brother told me that. No, had had no conversation with my brother between the time of signing the power of attorney and the time I had this conversation about this ratification. I had not seen him for nearly two years I think it was. I had no conversation with anyone concerning the oil lands transaction during that time, nor received any advices concerning it. No, at the time I executed this ratification I did not know how many claims had been located by McMurtry under the power of attorney or the area of lands embraced in any location or locations that my name appeared on as a locator. The only thing, as near as I can recall, was the statement that I received that quite a number of acres had been located, and my name had been used on several occasions. Received that information from my brother at the time of signing this ratification. Don't remember that at that time I learned anything about the contents or purposes of this contract of August 4, 1910, with Herrin and others, mentioned in the ratification. Understood the development was very poor at that time, had not been progressing very fast. My brother told me that. That is the only source of information I had. Yes, I knew McMurtry at that time. Had met him in his office, 299 Broadway. Had then known F. H. Searls about two years. After signing this ratification I next heard of these oil land matters in September, 1910, my brother C.

(Deposition of Frederick S. Thorn.)

W. Thorn mentioned it to me. I then received a check for \$250.

Q. I call your attention now to a check, which is substantially as follows: "No. 113, September 23, 1910, Second National [352—246] Bank of the City of New York, Pay to the order of Frederick S. Thorn, Two hundred and fifty dollars (\$250.00), F. H. Searls," and on the reverse side there is the following in typewriting: "Received from L. B. McMurtry, \$250.00 in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry in my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 21st day of December, 1907." That ends the typewriting, and underneath is written the name, "Frederick S. Thorn." Is that your signature to that check? A. That is my signature. Yes, that is the check referred to. My brother, Charles W. Thorn, presented it to me. The typewriting was on the back when I signed it, and I read it. Returned the check to my brother and received \$250 in cash. He said they were trying to do the best they could in regard to the land, and that that was the first outcome on it, to come out of it. No, did not know how locations had been made. The next I heard was about a year after that I received shares in the Pacific Oil Lands Company through my brother. Stock Certificate No. 29, of the Pacific Oil Lands Company, shown me, is the certificate just referred to, and the receipt thereon: "Received Certificate No. 29, for 1000

(Deposition of Frederick S. Thorn.)

shares of Pacific Oil Lands Company," date September 11, 1911," bears my signature. I signed that receipt in September and returned it to my brother. When my brother delivered this certificate to me he said that possibly we would derive something out of the stocks of that company, in the future. Said we were entitled to it because of acting as locators. The next transaction was in signing a proxy in 1913. [353—247] Exhibit 23 bears my signature, and is the instrument above referred to. It was presented to me by my brother C. W. Thorn. Don't remember what he said at the time. All I can remember is he wanted me to sign that proxy, so that Mr. McMurtry could vote my interests, and so far as the oil lands are concerned, why, I don't remember just what it was he told me at that time. Q. Did you understand what interest it was that you were allowing Mr. McMurtry to vote? A. I might have at the time, but what it was has just escaped my memory at the present time. The next transaction was in January, 1914, I received a check for \$20. Yes, that is my signature on Plaintiff's Exhibit 24, and I remember having signed it but cannot say whether it was presented to me by some person or came through the mail.

(Plaintiff's Exhibit 23 with this deposition and Plaintiff's Exhibit 24 is a proxy and consent to dividend similar in form to Plaintiff's Exhibits 5 and 6 respectively, with the deposition of Frank B. Chapman.)

I read all these various papers before I signed

(Deposition of Frederick S. Thorn.)

them. Yes, I received the check for \$20, dated January 8, 1914, on the Bank of California payable to the order of Frederick S. Thorn, signed Pacific Oil Lands Company, F. E. Harrison, Secretary and Treasurer, L. B. McMurtry, Vice-President, which is shown me, and that is my signature on the back. Received that in January 1914. Think there was a letter or circular accompanying it. Being shown three sheets of typewritten matter entitled "Pacific Oil Lands Company, First Report to Stockholders," will say that that is what accompanied the check, and I read it at the time. The next transaction was in April, 1914, when I sold the shares of the Pacific Oil Lands Company to Mr. Searls and surrendered the certificate No. 29 to my brother, C. W. Thorn. That is the only certificate of stock I ever had in that company. [354—248]

That is my signature on the back of Certificate 29. I signed a check at that time and received \$250 cash from my brother. I believe the check was drawn by Searls. My brother then told me that that was practically the finish of getting anything more out of it, that possibly there might be something turn up. Have not received anything since. The only information I had as to the resources and assets of this company at that time was through the statement I had received beforehand. I do not remember of knowing how many locations, my name was used on. I know several, that is as near as I can get to it. The only disposition of the lands that my name appeared upon as a locator that I know of was this

(Deposition of Frederick S. Thorn.)

Herrin contract. The only thing I knew as to what sum or sums of money, if any, McMurtry, Hoeppner, Searls or the Pacific Oil Lands Company had received out of these contracts with Herrin and others as near as I can remember, was a contract stated in a report. I think it was \$1,375,000, \$75,000 to be paid down and \$20 monthly. I last read that three days ago. I was then up with my brother and met Mr. Brann and we went over it together. He presented it to me and I read it. Yes, we discussed it. Q. Have you now any idea of suing Mr. McMurtry on any of these transactions. A. No, sir, I have no idea of suing Mr. McMurtry, because I have had full confidence in his transactions. I know that he would execute as near as possible to my advantage.

Cross-examination.

Have not consulted with any attorney as to suing McMurtry. Yes, have discussed it with my brother. No, had no understanding direct or indirect with McMurtry, my brother, Searls, or anybody else at the time I signed the power of attorney that if the lands were located in my name anybody else was to have any interest in [355—249] the locations. Nobody asked me for such an agreement. No, had no intention that any of the lands located in my name would belong to McMurtry or anybody else. Yes, I believe my brother at the time he brought me that \$250 check stated something to the effect that it was the result of the ratification and was a dividend among the 32 locators of the moneys received by McMurtry in connection with that contract. Yes, my brother stated

(Deposition of Frederick S. Thorn.)

that the \$250 check represented my interest as a locator in the lands located by me. No, had no reason to think that my brother or McMurtry, or anybody was depriving me of my rightful interest in the locations, or the avails of the locations. No, I received nothing from anybody for my services in acting as a locator. Q. And now, I want again to draw your attention to this check, which contains this assignment on the back of it, or all your right, title and interest, that check is dated September 23, 1910,—is it not true that your brother told you at the time of making this check, and at the time of the ratification, that that was,—that there was some question raised by the Government of the United States by reason of the withdrawal, and that if the Associated Oil Company stopped on this contract, there would not be any money coming out of it, because it was all to come out of the oil, and that the payment so made did come out of the oil that they got out of these lands,—do you remember any conversation to that effect, by your brother, in substance and effect? A. I remember something of that kind being stated, yes. Q. You can't tell exactly what? A. No, sir, I cannot tell exactly the words. Q. Isn't this true, that your brother said to you when he gave you the check for \$250, that Mr. McMurtry wanted this transfer to him of the lands located in your behalf, for the purpose of properly handling the affair in California, and so as to protect your interests and was taking the same thing from [356—250] the other locators to protect their interests in these

(Deposition of Frederick S. Thorn.)

lands? A. Yes. Q. Isn't it a fact that your brother told you substantially what I have related to you, or suggested it to you as a reason for taking these transfers from you on the back of that check? A. Yes.

Q. Is it not equally true that you understood, when you got this certificate, that Mr. McMurtry had caused this organization to be organized, and had transferred these contracts that you ratified to this corporation, and that this certificate of stock represented your interest as a locator in all of those lands?

A. Yes. Q. Did you ever understand that any other locator received any more of that stock than you

did? A. No, sir. Q. Did anybody ever tell you prior to your receiving that stock, or prior to your sale of the stock, that Mr. McMurtry had appropriated or taken any of the stock to himself, or given any to Mr. Hoeppner, or Mr. Harrison, or Mr. Kay, or to anybody else than the locators? A. No, sir.

Q. At the time you sold your stock, did your brother, or Mr. Searls, when asking you whether you wanted to sell the stock for the \$250, say anything to you about you could hold it if you wanted to, and take a chance on the results, or did they simply ask you whether you wanted to sell the stock? What was said to you about the reasons for offering you the \$250 for that stock? A. The reason for offering the

\$250 for the stock I understood was that this company wanted the controlling interest. Q. And you

knew the company had made the contract with McMurtry? A. Yes. Q. Was there anything said to you by your brother at the time this offer was made

(Deposition of Frederick S. Thorn.)

to you, that it looked as though the Government was going to try to take those lands away, on the question of the development of the lands, and that if they did, your stock would not be worth anything? A. I think there was something of that kind stated, yes. Q. In other words, your brother advised [357—251] you, as I understand you, to sell that stock and take the \$250 and get out? Mr. HALL.—I object to that, because that has never been testified to by this witness, that there was any such understanding. Mr. ACH.—I move to strike out the objection as suggestive and leading to the witness on the stand, called by the Government. Q. Did your brother say anything to you on the subject as to whether he thought you ought to sell the stock out on account of any possible action by the Government, and the effect of the action, in the event that it should succeed, on your stock, or the value of it? A. No, sir. Q. Didn't say anything about that? A. No, sir. No, I never revoked the power of attorney. Q. Did you ever tell anybody at any time that you were a fake or a dummy locator on these lands? A. No, sir. Had no intention of defrauding the Government through these locations or otherwise. [358—252]

Deposition of Julius F. Harder, for Plaintiff.

JULIUS F. HARDER, called April 21, 1917, on behalf of plaintiff, testified by deposition as follows:

Have resided in New York City since 1887, with the exception of two and a half years from 1891 to 1893, when I was in Chicago. Am an architectural

(Deposition of Julius F. Harder.)

engineer and was practicing architecture with an office at 31 West 31st Street, in December, 1907. I became a stockholder in the Empire Oil & Development Company in 1906, I think it was, was elected a member of the board of directors and later vice-president. Was vice-president in 1907, and L. B. McMurtry was president and was in New York more of that year. The office was Barclay Building, 299 Broadway. I visited the office on an average of about twice a week, mostly after four o'clock in the afternoon. E. A. Hoeppepner, C. W. Thorn, Frank Searls and F. H. Harrison were employed in the office. Daniel W. Darling, S. H. Freeman, John B. Thickens and Powell were there more or less. A man by the name of William C. Lewis and three or four others were there, in and out. Darling was a stockholder. Don't recall whether Freeman was or not. Freeman was not employed in any capacity that I recall. Lewis was a director and was quite heavily interested in the company. Thickens was a stockholder, but don't recall that he was an employee. Don't know whether he was an officer or not. C. W. Thorn was I think assistant Secretary. My recollection is somewhat hazy about the officials, but Harrison, Hoeppepner, Searls and Thorn were respectively treasurer, secretary, assistant secretary, and assistant treasurer at various times. I knew Hoeppepner in Chicago in 1890, where I was practicing architecture when Hoeppepner was an engineer, and in a way our professions overlapped. And when he came to New York about [359—253] 1904 our

(Deposition of Julius F. Harder.)

acquaintance was renewed. We became fast friends in Chicago, being members of the same Club and having offices in the same building. I met McMurtry through Hoeppepner. Became a stockholder in the Empire Oil & Development Company about 1906, under the following circumstances: Hoeppepner told me that he had made the acquaintance of Mr. McMurtry, that Mr. McMurtry was a miner, and oil expert from California; that Mr. McMurtry was a very great authority on oil production and oil matters generally; that he wanted me, he asked me to join him, Mr. McMurtry, in their oil business, and what they had in mind and in view of the operations that they were going to undertake, and that Mr. McMurtry was then in New York on that business, and he wanted me to raise all the money I could, to induce all the friends I could induce to do so, to join and invest their money in this oil enterprise. Think Hoeppepner first met McMurtry after he came to New York. At first Hoeppepner only devoted part of his time to the oil business; afterward he resigned his business with the National Fireproofing Company and devoted his entire time and attention to it. Hoeppepner told me that he was going in with McMurtry, and if necessary, was going to go broke on the oil venture; that he was going to devote his entire energies and time and money and everything to McMurtry's enterprise; and he incidentally told me that he was going to be, that the understanding was that McMurtry said he was to be a half partner. After my conversation with both McMurtry and

(Deposition of Julius F. Harder.)

Hoeppepner, which followed upon this series of talks with Hoeppepner that I have outlined here, I began to give Mr. McMurtry sums of money; I think it began in 1906, along in the fall; I would give him sums of \$100, \$150, \$200 and \$250, on a general understanding that we had had. I was not then a stockholder in the company, and at Christmas time, 1906, I received with a letter [360—254] of transmittal from McMurtry, 2,000 shares of stock in the Empire Oil & Development Company as a Christmas present jointly from McMurtry and Hoeppepner. Hoeppepner had asked me to invest all the money I could to back McMurtry. That was the way he said it, to “back McMurtry with all the money you can possibly raise. If you have any money in the savings bank, or if your wife has, back Mack with it. This is going to be a great enterprise, and a lot of money in it, and while there are risks involved, this man is a wonderful expert on the oil business and you back it with all the money you can raise, and I am going to do the same thing, and I am going broke on it.” I accepted it as a proposition, as I had full confidence in Hoeppepner, and after I had set McMurtry and had talks with him, I thought of it, and I felt confident that it was a very good proposition. Shortly after receiving this stock as a Christmas present, in about 1906 or 1907, I was elected a director. This 2,000 shares was the only stock I acquired in the Empire Oil Company. Don’t recall what the resources of this company were prior to December 1st, 1907, only in a general way that there

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was an option on some land which had been proven, I recall that one of the wells was a water well, there were drillings going on, derricks erected, well, there was a large area of land which had been located, but I do not recall at the present time the exact location of that. I didn't pay much attention to the field operations. Left that to Hoeppe and McMurry. All that I got in the way of information as to these technical oil matters was what I gathered, I should say, during intermittent conversations. Paid no particular attention to that part of the business. It seems to me that a banker, Ladd & Stratton and others whose names I do not recall, held this land either through locations or as patented land, in the Southern part of California. I destroyed [361—255] all the old Empire & Development stuff in 1912, and have nothing to refresh my memory. Had a general cleaning up of my office at that time and destroyed all my old papers. Yes, I did hear Chicago locators mentioned. Q. Do you know whether or not the lands held by the so-called Chicago locators were the lands that were being claimed by the Empire? A. I don't know that. My impression, however, is that they were not. McMurry treated the Chicago locations even at that time as being defective, and he placed no reliance upon them. My recollection is that I never knew him to treat them, in 1907 I do not recall that he ever treated them in any other way in referring to them. Q. Well, do you know whether or not the Chicago locations were considered as part of the assets of the Empire

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Oil & Development Company? Mr. ANDREWS.—Objected to as calling for the conclusion of the witness and the state of mind of somebody else; as cross-examination, leading, suggestive and improper. A. No, I do not, but— Mr. ACH.—Wait a minute. What is the question, whether he knew? Mr. HALL.—Whether he knew how he treated them. Mr. ACH.—Read the question. Q. (Question read.) Mr. ACH.—Now I want to add to the objection, the objection that the subject had been covered, and that the witness has testified that the assets of the company consisted of options on located lands upon which there was drilling, etc., and that this is useless repetition of the same question and already answered. A. I think I started to answer, didn't I? I think I said no, I did not. Don't recall that I ever had any of the official records of the Empire Company. I had a mass of correspondence from McMurtry and Hoeppner, Searls and Thorn, Harrison and others, and they were more or less connected, they were dealing with the business of the Empire Oil & Development Company in a personal way; I don't know that they were official records. I never [362—256] had custody of the records of the company. They were in charge of the office, the secretary and treasurer, the assistant secretary and assistant treasurer, Searls and Thorn were the two men that had those matters in charge. The records were all sent to McMurtry, to San Francisco, at the time of closing up the office, along about August or September, 1908. I never examined the re-

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cords to ascertain what the assets and resources of the company were. Q. Do you know who claimed the right of possession of those so-called Chicago locations during 1907? Mr. ANDREWS.—Objected to as leading, suggestive, cross-examination, assuming that somebody claimed the right of possession, when the witness has already specified that they were treated as defective, as far as he knew.

A. No. I don't know whether there was any business transactions carried on in 1907 with reference to these Chicago locations. Don't know on what tract of land this drilling was being done or where they got the water well. That exists in my mind at the present time through photographs that we had of the tracts. As I recall those photographs, they showed three derricks. Now, one of those wells had been sunk as an oil well, and a water well. McMurtry explained that that was more fortunate in that territory at that time than otherwise, and that a water well was more valuable than an oil well. That explanation was made during the latter part of 1906 or the period during 1907. My recollection is that this particular tract was one upon which we had an option. Don't know the legal description of the tract on which the water well was. Q. To refresh your memory was that either known as the Oregon-Midway well, or the Stratton water well? A. I think it was known as the Stratton water well; the other designation I do not recall.

Q. The records of Kern County, California, discloses that there is therein recorded a power of [363

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—257] attorney which purports to have been executed by J. F. Harder, before Samuel C. Worthen, a notary public (substance of Plaintiff's Exhibit 7 stated). Are you the J. F. Harder who executed that instrument? A. I am. That was signed at 299 Broadway, previous to McMurtry's departure of California. McMurtry wanted to get back to California previous to the first of January because options were expiring and locations were coming to their legal end and there were other matters there which required attention, and previous to his leaving New York City this document was signed by myself and others. The general matter of locations had been the subject of general talks between McMurtry, Hoeppner and myself. We had concluded that we would give up our efforts in the affairs of the Empire Company by reason of the financial and industrial conditions—give up both attempting to sell stock and attempting to negotiate loans in order to carry out the purposes of our oil development company. I didn't understand that the Empire Company was actually getting oil; but they were operating generally in the Southern part of California, Midway and San Benito; there was also another location that I do not recall. No one specifically asked me to execute this power of attorney. I had had talks with Hoeppner with reference to the matter of location, and being a locator myself previous to his leaving New York, which was at least nine months previously, or a year previous, so that I knew about, in a general way I knew about, I knew

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about the matter, and when this, when McMurtry was leaving and we were giving him these powers of attorney, no conversations or further explanations were necessary, so far as I was concerned. So far as I know, McMurtry prepared it. Somebody may have prepared it for him, some counsel, but as far as I am concerned, McMurtry prepared it. Q. Do you remember of any specific conference [364—258] between yourself and McMurtry, and the others who were connected with the Empire Oil & Development Company, just prior to the execution of the power of attorney? Mr. ACH.—You mean about the execution of the power? Mr. HALL.—Yes. A. I think probably it must have been perhaps two or three weeks previous to this date that affairs were shaping themselves so that McMurtry were going to leave New York for California, and he wanted these powers of attorney, and we had a general talk about it and he said that he wanted to get the names of responsible men, men who were citizens and who were voters and who were in good health and who knew what they were doing, and he didn't want any irresponsible people or people that hung around barrooms, or something of that kind. I think that is the way he expressed it at the time. In other words, he wanted responsible citizens who were voters and could be found when they were wanted. Something of that character. I remember that talk by reason of that circumstance which is clear in my mind, and at that time I know it was said that you attend to this and you attend to that, and others were given

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to some, and others were given to Powell and Thickers particularly, and this one that I signed was done right in the office, it was done without being requested to sign, and the men who signed these were men who were more or less in the office.

Q. When Powell and Thickers were delegated to do certain things, tell me the nature of those certain things, if you know? A. To get the names and procure certain individuals and explain that certain kinds of individuals, as I have described, after McMurtry had described to me what was wanted, and to secure their assent to the giving of this power of attorney.

Q. Was Mr. Julius W. of J. W. Pentz in the office of the Empire Oil & Development Company? A. No, he was not; he was the only man I didn't know. Didn't know Frank D. Yatlor very well. He [365—259] was not in the office of the Empire Oil & Development Company.

Q. How did you learn that the power of attorney had been prepared and was ready for your execution?

A. My recollection is that in one of the rooms, it was there on a table, waiting for my signature; there may have been someone else there, Mr. Thorn, Mr. Searls, Mr. Harrison, or Hoepfner, who said to me, "There is that power of attorney ready for you to sign." No, I was not called specifically for that purpose; that was during a period I was down to the office at least twice a week, and I saw someone connected with the company probably every evening. My recollection is that McMurtry left the city in time to get to California by January 1st.

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Don't know but what he got there for Christmas, 1907. Searls went to California some time in 1911 or 1912, I should say. Harrison went, I should say, in 1908 or 1909. Q. What was the purpose of Mr. McMurtry's leaving the city in 1907, if you know? A. Well, there was nothing more for Mr. McMurtry to do in New York City. What we were attempting to do we had to give up because of the financial crash in 1907, in October, we had concluded that we were about through with frenzied finance and we were going to take off our coats and go to work in a small way. I was to remain here as vice-president of the Oil Company and handle the affairs as best I could. McMurtry told everybody here that I was to act in his place and stead, and gave me full description of the powers to do that. He told all the other men that that is what he wanted done. Now, he was going out there—Hoeppner was already in San Francisco—and Mr. McMurtry was going out and Harrison was to go soon thereafter. Now, these three men in California were to gather whatever other assistance they could, physical, financial and in every other way, and they were going to locate lands and were going to explore oil. The understanding [366—260] was not in the big way we had intended before, but in a small way, we were to attempt to do in a small way what we had failed to do in a large way. Q. For what concern, if any, corporation, if any, or individuals, if any, were these transactions to be carried on in this small way that you speak of? A.

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Well, now, that was to be done directly for those who were standing with Mr. McMurtry at that time, the idea being that if we, those that were associated with him, as I was associated with him, that if we got on our feet, we would be enabled to pay the debts of the old company, clean out McMurtry's personal indebtedness that he had incurred by reason of the old company, and satisfy the stockholders of the old company who were clamoring and accusing the agents of Mr. McMurtry of making false representations, they were denouncing the company and its methods for its failure, and they were clamoring to have their money back. Now, the proposition was that if we made any money, we would satisfy these stockholders of the old Empire Company, and in the course of time there would be a new company formed which would be representative of those who were contributing their efforts and physical work and capital to the accomplishment of this purpose. Mr. ACH.—I move to strike out the answer as not at all responsive to the question. It would be better if you just answered the question. Q. In your last answer you have referred to the old company. What company do you mean? A. The Empire Oil & Development Company. Q. Was it your purpose at that time to entirely abandon the affairs of the old company, or to try to rehabilitate them and get the corporation on its feet again? Mr. ACH.—I object to the question as to the purpose of this witness, for the reason it is not pointed to any act or acts, whether the giving of the power of attorney,

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the entering into some small enterprise with Mr. McMurtry out there, [367—261] whether it had reference to the powers of attorney, which locators were obtained of persons, or whether it has reference to anything that Mr. Hoepfner might do, or whether there was any conversation between this gentleman and these other people, as to whether these powers of attorney were to be used for the purpose of rehabilitating the corporation, or whether it was done for the purpose of defrauding the Government, or for any other purpose. Mr. HALL.—We object to such a detailed— Mr. ACH. The point of the purpose is not stated. Mr. HALL.—The objection is highly improper in that it consists of an argument at this time stating counsel's position in the matter. Mr. ACH.—I am not making an argument. I am pointing out the thing to you, just as to anybody else. Mr. HALL.—As well as to everybody else. Mr. ACH.—Yes, as well as to everybody else; yes, sir. I cannot imagine his purpose. A. What is the question, now? Q. (Question read.) Mr. ACH.—I make the further objection that the purpose to which counsel addresses himself is not indicated at all, what purpose is meant by the question, and therefore the further objection is made that the question is entirely too ambiguous for anybody to answer. Mr. ANDREWS.—And the further objection that the word "or" there is ambiguous, because it does not designate in any way whether he means the witness or various persons to whom attention has been

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called. Mr. ACH.—That is what I intended to say, but I guess I didn't say it. The WITNESS.—Answer? Q. You may answer, Mr. Harder. A. Why, we did not abandon the old company. The stockholders abandoned us. All we wanted to do was to satisfy their clamors and demands. They were willing to be satisfied and we were willing to satisfy them. We were not abandoning them, consequently there was no such question of rehabilitating the old company. All they wanted to do was to be square with them and in any way, shape [368—262] or manner, and we considered it a matter of honor, who had managed the old company and solicited these funds, and to satisfy them in some way. That is the exact situation at that time in the best way I can describe it. No, I received no advice or information as to what use had been made of this power of attorney prior to January 1, 1909, nor did I made any inquiry of anyone. I received a number of letters from Hoeppner during that period, and from McMurtry also. They have all been destroyed. Hoeppner told me of his personal life and business. McMurtry's letters pertained to the business that we were still transacting here until December, 1908, with the old Empire Company. We had gotten started after a foreign loan, and McMurtry was writing me concerning the matter, and also asked me to help out with sums of money; he asked me to give sums of money to Searls, Thorn, Freeman and others on his account, which I did to the extent that I was able to do so.

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Cannot recall that McMurtry, during 1908 apprised me what was being done with any lands that were then under location. No, I did not receive during 1908 and advice as to a contract that had been entered into between Mr. McMurtry and Mrs. J. M. McLeod for the development of section 32, township 31 south, range 23 east, in Kern County California. Nor did I receive any advice during 1908 as to what development operations were being carried on under McMurtry's direction upon oil lands in California. Nor was I apprised or received any information with reference to a conveyance by McMurtry to H. C. Stratton of any interest in the land embraced in Sec. 28, township 31 south, range 23 east, in Kern County. The first information I had that McMurtry had located any lands in Kern County in my name I think was at the time of the ratification of the power of attorney. Yes, I had made inquiries. I inquired in my letters to McMurtry, and of Hoeppner I inquired constantly [369—263] as to what they were doing. No, I did not receive any specific advice as to what land had been located by the use of my name. My recollection is that that ratification (Plaintiff's Exhibit 24) was brought to me by McMurtry, either in my office or he asked me to come to the Knickerbocker Hotel. I don't remember just which. But it was about the time McMurtry was in New York. He said he had a deal on of some kind; that in order to put it through it was required that this ratification should be given in order to cover the interval

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of time between the original power of attorney and this date, showing the persons were still living, competent of disposition; that is about all. There was considerable talk about what they were doing generally and what they were seeking to accomplish. The substance was to the effect that he had repeated the details so often that he was tired of it, and he said, "Now, there is not any use to repeat to you all the troubles and difficulties we are having out there, but we are getting on our feet, and there will be a big melon to cut some time in the future." The first time I learned definitely of any modification or supplemental contracts that were made by McMurtry and Herrin, or the Associated Oil Company, was when McMurtry told the story on the witness-stand in San Francisco. Prior to that I only knew that this general deal that he had on was progressing favorably. I heard more about that when he came back and gave me \$250 and 1,000 shares of stock in the Pacific Oil Lands Company, September, 1911. This \$250 was paid me in cash and I signed what I understood to be a receipt, an evidence of the payment of \$250 having been made to me, of bookkeeping record. It was a check. It was in the form of an endorsement on the back of a check. I understood that \$250 was a dividend that was coming to me by reason of my interest with McMurtry. My understanding was that [370—264] this receipt on the back of the check was presented to me for the purpose of keeping books. Yes, this original check was exhibited and acknowl-

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edged by me while on the stand in San Francisco in November, 1916 (Attention of witness directed to page 700 of the record in suit A-38, United States vs. Thirty-two Oil Co. et al.). That is a copy of the check I received in September, 1911. The typewriting above my signature was there when I signed it, and I read it. Do not recall whether I read it before or after signing it. Left the check on the table after signing, and assumed that McMurtry took it. I received \$250 in cash from McMurtry in five-dollar bills. He said he had \$250 cash he wanted to give me and I told him I didn't need the money at that time. Rather he would keep it and add it to the other money he had of mine. He said no, they had all the money that they needed at the present moment, and if they needed more they would call on me; and he said, "There is the receipt over there, if you will sign it for bookkeeping records." I picked up the piece of paper and saw it was a check for \$250, and I said, "Mack, what am I to do with this? I see it is a check. I understood you to say you were going to give me \$250 in cash," and he said, "Yes, but I want you to endorse that on the back and I am going to cash the check." That is substantially what occurred. There was considerably more conversation, and, while I was signing the check and reading what was on the back of it and getting this explanation, Mr. McMurtry and I were in a running conversation during this short period. Yes, this certificate of stock was delivered to me at the

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same time. I could not identify this certificate No. 24 as the one. But I don't see why it should not have been. That receipt on the stub of certificate No. 24 contains my signature. Concerning that certificate, McMurtry told me in addition to the \$250 which he gave me, he [371—265] said he was giving me a certificate for 1,000 shares in a new company that had been formed; that this was to be a small company and they were not going to sell any stock and this interest would be only to those who had stood by him in his troubles and difficulties, and to whom he was under obligations, those that had assisted him by services and financially; that matters were progressing very favorably, and he wanted me to take care of this certificate of stock very carefully and put it away in my safe and never let it get out of my possession. He said some day "that is going to be worth a great deal of money." No, I did not then know what the resources and assets of the Pacific Oil Lands Company were or what lands were held or owned or offered by it, or the capital stock, or definitely who the shareholders were. I had a general idea from what Mr. McMurtry told me as to the number and character of them. Did not know the various holdings of the different stockholders or the respective proportion of such holdings, or how many tracts of land or placer mining claims had been located upon in which my name had been used as a locator. The only thing I knew as to any transfers, leases, deeds or contracts which McMurtry had made act-

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ing under the power of attorney of December 18, 1917, affecting lands which had been located under such power was the information received from McMurtry, which was general in its character. Was not advised specifically of the assignment of those contracts with Herrin and others or with the Associated Oil Company to the Pacific Oil Lands Company. The next transaction in this matter I think was in December, 1913, I think Mr. Thorn came to my office with a form of assent to distribute profits in the Pacific Oil Lands Company, and my recollection is that Mr. Thorn came to my office and said that Mr. McMurtry had asked him to come to see me to sign that assent, as [372—266] it was necessary to have unanimous action by all the stockholders, and I listened to what he had to say, and I said I would consider it, and I signed the assent and sent it to Major Hoeppner. Yes, I have a sort of recollection of a proxy. Thorn came to my office, I think, twice. On one occasion I know he had come from California. He brought a box of preserved California fruits with him. Now, what he had, what else he had at that time, whether it was some other document or documents he wanted to sign, I cannot remember.

(Plaintiff's Exhibit 25 with this deposition introduced. It is a consent to dividend similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman and purports to have been signed by Julius Harder, December 9, 1913.) [373—267]

Yes, I signed that paper (Exhibit 25). My rec-

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ollection is that this was brought to me by Mr. Thorn, who asked me to sign it, as I have stated, and I said that I would consider it, and I did sign it, and sent it on to Major Hoeppepner with a letter of transmittal. That letter is in the record of the San Francisco trial. Yes, that is the letter copied at page 713 of the record in suit A-38 (same being as follows):

“Major E. A. Hoeppepner,
Room 750 Mills Bldg.,
San Francisco, Cal.

Dear Major:

I enclose you the consent desired. I am very glad to hear that you fellows are doing so well as to be able and desire to distribute profits. I do not know what is coming to me in this way but if agreeable to you I would prefer that you should retain it and apply the same on account of what I owe you. I trust to be able in the early part of the year to settle up in full my indebtedness to you.

Wishing you a Merry Christmas and Happy New Year and with the best regards and kind wishes to McMurtry and Harrison, I remain,

Yours very truly,

JULIUS HARDER.”

I was then indebted only to Hoeppepner personally. I had borrowed \$1,000 from him. No, I did not consider that McMurtry was indebted to me at all. That money I had given him, I had given him in the light of the talks I had with McMurtry and Hoeppepner; that was money which I gave him to be

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used in our business. I was his business associate to that extent which I contributed this money to him, so I did not ask him for any repayment of it, or consider it as due me. The next transaction was the receipt of a dividend check for \$20, I think in January, 1914. Q. I invite your attention now, Mr. Harder, to a check, in substance, as follows:

San Francisco, 1/9/1914. No. 1190. The Bank of California, National Association, San Francisco. Pay to the order of J. F. Harder, Twenty Dollars. (Signed) Pacific Oil Lands Co., by F. E. Harrison, Secy. & Treas. L. B. McMurtry, Vice-president. [374—268]

The endorsement on the back is: "J. F. Harder. Julius F. Harder." Is that the check you received, that you have referred to as the dividend check? A. I should say so. Yes, the assignment dated March 23, 1914, to which my attention is called, on Certificate 24 of the Pacific Oil Lands Company bears my signature. I think Searls came to my office and asked me to sign the same. He said he had been sent by Mr. McMurtry to get my certificate of stock in the Pacific Oil Lands Company, and to give me \$500 for it. I told him if Mr. McMurtry wanted my shares, my stock certificate, I thought he ought to write me the purpose and the reason for it, and to tell me all about the condition of oil affairs and what was going on, and what was being done, and why this request was made of me, the reason for it. He said if I thought there was anything wrong about it, to wire to McMurtry

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and ask him about all those particulars. I did not wire. I told Searls I thought such an explanation should come from Mr. McMurtry under the circumstances, and he said very well, he would wire to Mr. McMurtry and have Mr. McMurtry wire me to give Searls the certificate for \$500. I received a telegram to that effect from McMurtry the following day. I thought it over and sent the certificate to Hoeppner," with a letter. The telegram I received from McMurtry (as taken from page 725 in suit A-38) is as follows:

"San Francisco, Cal., 23 J. F. Harder, 120 W. 32nd St., New York City, NY. Transfer of stock in bank for sum of five hundred meets with approval here and the amount will be held to apply on your account with Major as per your request. L. B. McMurtry, 849 Mills Bldg."

In the letter I sent to Hoeppner with the certificate, in substance I stated the fact of Searls' visit and wanting the certificate for \$500, and I said I distrusted Searls and could not get any information from Searls as to the condition of the oil business and what [375—269] they were trying to do. I therefore sent the certificate to him, and left it in his keeping for him to use in his discretion. I received nothing directly from Hoeppner in response. I understood that whatever the certificate, whatever the actual value of the certificate would be, would be credited against my borrowing of \$1,000 from Major Hoeppner. I have never had any specific

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statement to the effect that \$500 was credited against that loan until the Saturday after McMurtry was on the stand in my room in the hotel, and upon my questioning Major Hoepfner personally there, he told me that he had credited me with \$500 on that certificate against my loan of \$1,000. That was in the hotel in San Francisco, about November, 1916. Q. Have you ever received any money, credit or thing of value, since that time, on account of these oil land transactions? A. I received further dividends until, I received further dividends until the preceding 1914, I think. What further dividends did you receive? A. They are all in the other record. As I recall, there was another dividend of \$20, one of \$40, and I think one of \$100. Q. How did you receive these dividends? A. By checks, checks from the office of the company, through Major Hoepfner. No, at the time I surrendered this certificate 24 I did not know how many locations had been made on public oil lands in California or elsewhere by McMurtry under the power of attorney of December 18, 1907, in my name. Yes, I had sought advice on the subject from McMurtry. The reply was that McMurtry's prognostications as to the oil lands—I can only give you the substance and not the exact language—were being borne out; the lands would become very valuable; that when there was any definite results or definite information to give myself and all the other men in the east would be fully advised, would receive complete reports. No, did not know the assets

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or resources of the Pacific [376—270] Oil Lands Company, when I surrendered certificate No. 24, nor that the contract of August 4, 1910, the supplemental contracts between Mr. McMurtry and Herring and others and the Associated Oil Company, had been transferred to the Pacific Oil Lands Company. No, since surrendering certificate 24 I have not been a stockholder in the Pacific Oil Lands Company.

Cross-examination.

Yes, the original correspondence between myself and Hoepfner and McMurtry that I did not destroy was produced in court at the trial in San Francisco in suit A-38. Don't recall seeing McMurtry between the time he left New York in December, 1907, and the time I signed the ratification in August, 1910. Was living in Queensborough, or County, New York, in 1910. My attention being called to the fact that this ratification was acknowledged before a notary public by the name of Beam, in Queen County, New York. I do not know Notary Beam. McMurtry may have brought this ratification to my house in Queen County, New York. Mr. McMurtry may have been in New York on Saturday and gave me that paper and we could not find a notary on Saturday; and Mr. McMurtry would frequently come to my house on Sunday, and if he came to my house about that time on Sunday, he may have left that with me for execution the following day, something of that sort. The fact that this paper was executed in Queen County does not further refresh my memory, nor does the fact that

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it was signed in the presence of W. H. Whidden, 1236 Broadway, New York City. I do not remember Whidden. The only power of attorney that I ever gave McMurtry was the one to which my attention has been called. Hearing the substance of that power of attorney stated (Plaintiff's Exhibit No. 7) will say yes, I understand the import of that language, and read it before signing, and understood that 7 other persons were signing the same instrument. [377—271] Do not recall now whether I understood that there were to be thirty-two in all at that time. I knew there would be others, and that we were signing it so as to place Mr. McMurtry in the position that he could, if he found any oil lands out in California, subject to location, or lands that he regarded as oil lands, locate them for me and in my name, and in the name of my associates. Yes, it is a fact that prior to the signing of these powers of attorney Mr. McMurtry or someone else had imparted to me the knowledge that in California locators frequently made contracts with other persons whereby such other persons would become the owners of part of the land located for the consideration of making the experimental or original drilling upon the lands for oil. Yes, it is a fact that I knew when I signed that power of attorney that I not only authorized Mr. McMurtry to locate oil lands any where in the United States and particularly in California, but also I authorized him to dispose of the lands, to mortgage them, and to make contracts of and concerning the lands, and

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also to lease them. Q. Was there *abt* bargain or agreement or understanding, direct or indirect, express or implied, that McMurtry was to have any interest in the lands that were located in your name? A. Well, I should say in an indirect way, by reason of the fact that Mr. McMurtry and myself were business associates. Now, out of the profits arising out of the product of the land and through the business transacted, the sale of the oil, we were associated in business, and we were financial partners. The principle was there. Q. Was there any writing or agreement to the effect that he was to have an interest in the lands located? A. No. [378—272] No, there was no statement or agreement between myself and McMurtry or between myself and the other locators, that I know of, whereby it was agreed as to any profits derived from the locations or sale of oils or minerals taken from the land that McMurtry was to have any definite amount or definite proportion of either the lands or oils or minerals or net gains therefrom. Yes, I read the ratification before signing. No, I did not know by the reading of that ratification that McMurtry had caused the power of attorney I gave him in 1907, to be recorded in Kern County, California. Yes, I knew from the reading of that paper that he had located oil lands in California in my name and that he had made contracts with W. F. Herrin and other persons concerning lands so located, and that by signing that paper I was ratifying such acts. Yes, McMurtry, when he presented

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that ratification to me, told me that he had gone over the same matter a number of times, and was tired of talking about it, and that he had retained the ratifications of all or nearly all the locators for whom he had acted, or words to that effect. That the attorneys of Mr. Herrin and other persons with whom he had made the contract, insisted that before the contract could be finally determined that it was necessary to have a ratification from all the original locators, and the general understanding was that returns from the contract was problematical, and that the pay, if any there was, was to come out of the oil which might be found on the land. No, I had no intention when I signed that power of attorney to permit the use of my name so that McMurtry or anyone could acquire more oil or mineral lands than was lawful, or to cheat and defraud the United States. Nor did I ever know of any intention on the part of McMurtry to acquire a greater number of acres of mineral [379—273] lands by means of this power of attorney or locations made thereunder than he was entitled to as an individual, nor did I intend that that power of attorney or any action taken thereunder should redound in that way for the benefit of McMurtry, Hoeppner, Harrison, or any other person.

(Cross-examination suspended to permit the completion of the direct examination.)

Direct Examination (Continued).

(Attention of witness invited to papers marked Defendant's Exhibit "C," a letter dated December

(Deposition of Julius F. Harder.)

3, 1913, and Defendant's Exhibit "D," a letter dated January 8, 1914.)

After reading papers marked Defendant's Exhibits "C" and "D," I do not recall ever having received similar letters. Yes, I received the dividend check for \$20.00, dated January 8, 1914. My recollection is that it came through the mail from the office of the Pacific Oil Lands Company at San Francisco. I do not recall receiving a letter similar to either of these exhibits with the same.

(Witness' attention invited to three sheets of typewritten matter attached together, marked Defendant's Exhibit "E," bearing title, "Pacific Oil Lands Company, First Report to Stockholders.")

Don't believe that I received such a communication with the dividend check. Don't believe that I did; that is all new to me, that is, comparatively new; I have seen this in San Francisco, but the document—I have no recollection of it at that time, 1913, or the early part of 1914. My best answer is that I do not believe I received that or the two letters, for the reason that my letter to Hoeppepner about the transmittal of the consent bears a date previous to which I had [380—274] destroyed everything, and subsequent to which I had retained everything; and if I had received them they would be in my files, which I have reached and failed to find.

Cross-examination (Continued).

Yes, I remember about the time I signed this ratification in August, 1910, McMurtry came into

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my office at No. 31 West 31st Street, and talked to me about the general condition in California, as to oil prices, oil, and development for oils, and that I realized that I was ratifying the power of attorney signed by myself and others.

Q. Now, didn't Mr. McMurtry say to you at that time that things were beginning to look—this or substantially this—that things were beginning to look prosperous and his prognostications as to the production of oil on these lands was beginning to be borne out by developments, and that he was going to straighten everything out, and after that was done, could proceed with the development of our interests, as was the case originally? A. As was the “intent” originally, that should have read. Q. As was the intent originally in the old Empire Oil and Development Company? A. Yes, sir. Q. Was it not the intent of the old oil development company to develop lands out in California? A. It was. Q. Did you not so testify in the case of the United States against Thirty-two Oil Company and others in San Francisco? A. I did. Q. You did not intend, did you, by that answer, to say that the proportion of land that were held under locations made for yourself and others, was to be divided among the stockholders of the old oil company, known as the Empire Oil & Development Company? A. No, sir. Q. As was stated at that time? A. No, sir. [381—275] Q. It is true, is it not, Mr. Harder, as you stated upon your direct examination, that it was no longer a question of rehabilitating

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the oil company; that you and McMurtry and others regarded yourself as in honor bound to pay the old stockholders of the Empire Oil & Development Company some day whatever money they had invested in that company; is that not a fact? A. It is.

No suggestion or idea on anybody's part to rehabilitate the old Empire Company.

Q. Was it ever intended that any lands located under the powers of attorney given by you and your associates, if any should be located thereunder, should be the property of any stockholders of the Empire Oil & Development Company, or the Empire Land Company? A. No. Q. Or the Empire Oil & Development Company? A. No.

Yes, I understood that I was given stock in the Pacific Oil Lands Company by reason of my interest as a locator, and paying for work that was done for and on behalf of the locators, in doing assessment work and development work, or whatever was done in the matter of lands located under the powers of attorney. That was the idea I gathered.

Q. And at that time you thought you were getting your full share of what was coming to you, with stock or money raised on stock and which he was paying in order to hold you harmless from liability or liabilities incurred in the matter of locating and taking care of these lands; is that a fact? A. Yes, sir. Yes, McMurtry stated in conversations concerning this ratification, that he was obtaining ratifications of the powers of attorney, in order to avoid

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having to make contracts [382—276] with all the locators. Yes, I know Frank D. Taylor. First met him when the original power was signed. Don't think he was a stockholder in the Empire Company nor was Daniel W. Darling to my knowledge, or J. W. Pentz. Was not acquainted with Francis E. Pratt, William F. Christman, Mark W. Hatch, or Hamlin E. Hatch. Don't know that any of them were stockholders in the Empire Company, nor did I know T. R. Bailey, Walter Wilson, J. E. Farrell, J. F. Romaine, Jr., Samuel R. Banks, Frank B. Chapman, Julian P. W. Richmond, George W. Berry, George A. Neinecke, H. E. Bashore, R. B. Welch, W. A. Keenan, C. Rupert Walker, William Mahr, or Eugene Metz, nor do I know whether either of them was a stockholder in the Empire Oil Company.

Q. I find, commencing at the bottom of page 697, the following question put to you, in the former trial of this case, in the trial last referred to:

“Q. Now, on the occasion of your seeing him”—referring to McMurtry—“both in 1910 and 1911, did he speak to you about the matter of locations that had been made of oil lands in this state pursuant to the power of attorney you had given him? A. Yes. Our old lands had been—no, some of the old lands, of the old Empire Oil & Development Company, we had lost; but others had been located. We had new lands, lands which were much more valuable and much more promising as to the quantities and grade and character of the oil to be pro-

(Deposition of Julius F. Harder.)

duced than the old lands that we had lost, notwithstanding the fact that they had gone to an enormous valuation by reason of his prognostications having been carried out." Did you so testify? A. Yes, sir. Q. Was that the fact at that time? A. Yes, sir. Yes, during McMurtry's visit to New York, in the summer of 1914, he told me that it was the intention of Hoepfner [383—277] himself to put down a well upon the most profitable land for the benefit of the locators—a locator's well. Yes, at the time Searls came to see me to get my stock in the Pacific Oil Lands Company he said that they were taking up all the stock of stockholders and all the others had been very glad to cash in for \$250 but Mc. had told him to give me \$500, and I inquired why I should have more than the others. No, I did not know that the other stockholders were locators with me upon the lands; yes, I assumed that the other locators held the stock, but I don't know who they were. Yes, Searls said that everybody out here was very much in the dumps because the wells that the Major was putting down were not productive and were no good, but he was going to keep on putting down wells until he got one that was good; that things were very disheartening because these wells were not producing in accordance with McMurtry's expectations of those fields which he had painted as being very rich and productive and profitable and highly valuable for oil. [384—278]

Q. Had you been advised or told that any of the

(Deposition of Julius F. Harder.)

San Benito locations or San Benito property had been conveyed or transferred to the Pacific Oil Lands Company, besides the contracts concerning the Midway or the San Joaquin property? A. No. At the time McMurtry came to New York, my understanding was that the properties of the Pacific Oil Lands Company were the lands located under the power of attorney I had given and that they were getting ready to carry on the business of getting oil and selling it and transacting any other negotiations concerning these located lands, and that the proof that there had been oil found there, had been verified, they were now ready to do business, which was a condition which had not existed up to that time; consequently this company was formed to proceed to do business in the same way that we had the old company in New York at the time, but it was to be a much smaller company, in which stock was not to be sold. It was to be a small corporation, including those that had been of assistance to him, the locators and those who were interested with him and who were working here in California.

Q. I find, commencing at page 719, a reference to a letter which you said in your former examination, you wrote to E. A. Hoepfner, and that that letter was dated March 23d, 1914. Have [385—279] you that letter now? A. No, sir. That is still with all my other letters, and the last I saw of it was in court and in the hands of Mr. Lawler.

(Deposition of Julius F. Harder.)

Q. I find in this letter which makes the letter read as follows:

“Dear Major: Searls has just left the office. He wants my certificates of the Pacific Oil Lands Company endorsed over to him. He wants to give me \$500 in cash. He says he has settled with all the others here on the basis of \$250. He gave me to understand that the extra \$250 to me was because he thought so highly of me. I told him I appreciated all this, and that if you or McMurtry wanted my shares you could have them at any time for the asking.

“I don’t, know anything about the oil business, and you may recall that Mr. Searls and Mr. Thorn at one time despaired of my ever learning it. I am rather inclined to believe with them now.

“I told Searls that, of course, you and Mac could have my stock for \$500 and that as I owed you more money than that, I would send the stock to you endorsed to you over and you could give me credit on what I owed you for it so as to avoid the unnecessary transmission of checks and money, together with collection charges thereon both ways. Searls seemed to have the \$500 cash right in his pocket, however, and it seemed to be burning a hole through the bottom. The more I suggested that I send the certificate to you the more insistent he became that this was quite unnecessary. He wanted me to wire to Mac and then he intended to wire to Mac and I had the greatest difficulty in getting him out of the office.

(Deposition of Julius F. Harder.)

"I do not believe a word that he says and he arouses my distrust and suspicion more now than he has ever done before. What it is all about I do not know but I will certainly not endorse [386—280] my certificate over to Searls and I will certainly not take any money from him. I do not believe that it is possible for him to be sincere with any person on the face of the earth. I received the check for \$20 dividend in January. Enclosed please find my certificate endorsed in blank. You may do anything you like with it. If you want to give it up for cash you may credit me with the amount against my indebtedness to you.

"Yours very truly,

"JULIUS HARDER."

Did you write such a letter to Mr. E. A. Hoeppepner at that time? A. Yes, sir, I did. Q. I find on page 723 you were interrogated concerning a telegram sent by you to Major Hoeppepner, which appears to be dated, March 23d, 1914, addressed to Major E. A. Hoeppepner, San Benito, Cal., as follows:

"Decline Searls offer five hundred for stock mail you today.

JULIUS HARDER."

Did you send such a telegram? A. Yes, sir. Q. Did you mail him that stock that day in that letter? A. Yes, sir. Q. Did you not receive an answer from Mr. McMurtry, dated San Francisco, Cal., 23—this is at page 725 of the record—reading: "J. F. Harder

120 W. 32nd St., New York City, N. Y.

(Deposition of Julius F. Harder.)

“Transfer of stock in blank for sum of five hundred meets with approval here and the amount will be held to apply on your account with Major as per your request.

“L. B. McMURTRY,
849 Mills Bldg.”

A. I received that telegram, but it was not in answer to anything I had sent to Mack. Q. Did you not receive the following letter from Mr. — substantially the following letter—from Mr. Hoepfner, dated San Benito, March 24th: [387—281]

“San Benito, Cal., 3/24/1914.

“My Dear Old Harder:

“Your telegram of the 23rd reached my hands O. K. Same was relayed over country telephone lines a la stage. Am away out in the wilds. Had a good broad grin on my jaw when I read your telegram. Good! I hope you handed it good to that—” then he applies some epithets to him here—
“—our.”

“I am onto him as big as a house. In the case presented to you I was not aware that Mac had instructed him to gather in all small ends of stock. I thought Harrison would do it. It was a matter that Mac, Harrison and myself decided to, thinking it best to take up the small amounts of stock and thereby cut out a big bunch of correspondence and accounts. I will await your letter. It may be possible that I will have to give that cur a punch in the jaw. In the meantime I will see what is reported from the office. Am busy rigging up a new hole

(Deposition of Julius F. Harder.)

Don't like the looks of the other one. That all goes in the game. How is business with you?"

Did you receive such a letter from him? A. Yes, sir. Q. Did you receive a letter dated March 31st, signed, "A. H."

"San Benito, Cal., 3/31/1914.

"My Dear Old Harder:

"Your letter of the 23rd inst. reached my hands today. Good work. I would not trust that S. of a B. any further than I could see him. D-m cur hides behind Me. I'll get him out behind some day & back him into a corner. He's afraid of me, hence that intense desire to get that stock himself. Before I get through with him I'm going to or hope to make a first class lair out of him & make him swallow it at that.

"I'll hold the stock for the time being & await developments. I even did not know the S of B was in New York. [388—282]

"When I sign it 500. will be credited to your account by myself. You could not have pleased me better, than to take the stand you did. Will report as soon as I get a statement.

"Your,

"A. H."

Did you receive that letter in due course? A. Yes, sir. Was it not signed "E. A. H."? Q. No, not according to this. A. Well, it should be "E. A. H." Q. I now find a letter in the record commencing at page 730, purported to be written by you to the

(Deposition of Julius F. Harder.)

Major, at San Benito, dated April 13, 1914, reading as follows:

“April 13, 1914.

“Major E. A. Hoepfner, San Benito Cal.

“Dear Major: Your two letters duly at hand Searls hung around here pretty patiently and finally failed to turn up again as he said he would. It appears to me that he must have received a telegram from Mac advising him that you had my certificate. He did not say a word which I would construe to mean that you and he were not the dearest friends in the world. He did not say much about Harrison, and in fact while he appeared to be very sympathetic and invited me to lunch he did not give up very much information about anything. He did know what the amount of fare was to San Francisco and how long it took to get there, also that he was going back over the Southern route but he was sure not going to stop off to see you. San Benito was many miles East of the way he was going. He told me that your attention was very much absorbed by the second well that you were putting down and that everybody was disappointed that the first one had been a failure.

“At the time that he saw me last that he had all the certificates except mine and that morning another one which was [389—283] still outstanding had arrived from South America. I told him as he had them all except mine he need not bother waiting around for me, that I thought it would be better to deal with headquarters direct. He seemed to be

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very much hurt at this and said that I appeared to have some objection to himself. I did not reply to this suspicion but anyhow he said he would come in again, which he never did. I had no objection to his coming in again.

“He did not tell me what his own connection was at present with yourself and Mac. I told him that I had reached the conclusion that he was right when he said that I never would learn the oil business. He could not recall that he had ever said it and I told him that whether he did or not it was true that I sure never would understand it.

“I don’t know that it is all about but he sure was some anxious to get that certificate, and for some reason which he did not confide to me and he was apparently very anxious that whatever I did with it I should not send it to you.

“Trusting that you are well and enjoying good health, I am,

“Yours very truly,

“JULIUS HARDER.”

Did you send that letter? A. Yes, sir.

“Q. Now, I find a letter reading as follows:

“San Benito, Cal., 10/9/15.

“My Dear Julius:

“Put enclosed check for 100 bones in your jeans. Haven’t signed up your document yet. When things like above come along I will save them for you.”

Did you receive such a communication from Mr. Hoeppner? A. Yes, sir. Q. Was there a check enclosed? A. Yes, sir. Q. Was that letter left in

(Deposition of Julius F. Harder.)

San Francisco? A. Yes, sir. Q. What was [390—284] the check for, \$100? A. The check was for \$100. Q. Did you get it? A. Deposited it in the bank. Q. Had you given anything to anybody for that \$100? A. No, it was a dividend check on my stock. Q. And the next communication is dated November 6th, 1914, and is as follows:

“My Dear Harder:

“Yours of the 7th received Saturday. Mail goes out this A. M. Don’t you worry about owing me anything. I have another draft for \$20 payable to your order which I received from the office.”

Did you receive such a letter from Mr. Hoepfner? A. Yes, sir. Q. Did you, pursuant to his suggestion, write a letter to the Pacific Oil Lands Company, referred to in that letter? A. Yes, sir. Q. I note the next letter from which there is any quotation is dated December 15, 1914, as follows:

“San Benito, Cal., 12/15/1914.

“My dear Harder:

“Enclosed please find check for forty bones. Put that in your jeans O. K. Every little helps. Best regards. etc. Will probably be able to get up to the city next week.”

Did you receive such a letter, Mr. Harder? A. Yes, sir. Q. From the Major? A. Yes, sir.

Q. I find another letter on the same page, namely, 740, dated January 7th, 1915, as follows:

“San Francisco. 1/7/15.

“My Dear Julius:

“Your Christmas Greeting received O. K. En-

(Deposition of Julius F. Harder.)

closed please find that draft for twenty bones. Put that in your jeans O. K.

“I find our mutual friend S. acting as a sort of private secretary for Mac. We are gradually getting our affairs straightened out. We are having our affairs straightened out. We are having some wet weather I hear, which speaks well for good crops.”

Q. Did you receive such a letter from Mr. Hoepfner? [391—285] Yes, sir. Q. Did you receive the check for \$20 mentioned in there? A. Yes, sir. Q. For what purpose was that check sent to you? A. Dividend check from the Pacific Oil Lands Company stock which he held.

No, I did not know at the time I received the 1,000 shares of stock in the Pacific Oil Lands Company how much stock had been issued. I inferred some of the stock had been transferred to Harrison, Searls, Kay, Hoepfner and McMurtry, though nothing was said to me about the amount issued to either of them. No, there was no contract made with McMurtry relative to his compensation in the event he should make locations which turned out to be profitable, or as to the amount he was to receive, nor was any contract made with Hoepfner as to the amount he should receive for advancing money or doing any work for the locators, if he did any. As vice-president of the Empire Company, I never had in my possession the financial records, books or accounts of such company. No, I did not know what lands had been located by McMurtry for the Chicago

(Deposition of Julius F. Harder.)

people at any time. Nor did I know prior to going to San Francisco that McMurtry had filed locations for me and my associate locators upon some lands that he had undertaken to locate for someone else. Yes, I understood at the time McMurtry paid me \$250 for my Pacific Oil Lands Company stock that he had received any money on account of the sale of lands. Understood that he had received just enough to pay each of the locators \$250. No, had not the slightest idea that he had received as much as \$75,000 or \$80,000 for that. Yes, I then had absolute confidence in McMurtry. Yes, I knew Hoeppner was aiding and assisting him. Yes, I still had confidence in McMurtry and Hoeppner. Yes, my understanding was that McMurtry's interest in the situation was to be determined by the action of [392—286] the locators as to a fair share of the returns and profits from the enterprise. McMurtry was to devote all of his time and energies to making locations and protecting them. There had been no conversation with reference to what the remuneration or compensation of McMurtry should be. No, prior to going to San Francisco in 1916, I had never seen any power of attorney or copy of one executed to McMurtry by Chicago people, nor had I ever had any talk with McMurtry or Hoeppner prior to that time about such an entry. No report was ever made to me by McMurtry or Hoeppner as to the land or money that was spent, either upon San Benito lands, or upon other lands, or how much money was spent by the Pacific Oil Lands

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Company upon San Benito lands. I did not know prior to going to San Francisco, what had been done with my certificate of stock in the Pacific Oil Lands Company, or how much the capital stock of such company had been issued or who got it. Yes, prior to signing this power of attorney we had been trying to negotiate a loan for the Empire Company to put down wells on lands which McMurtry thought were extremely valuable and on which the company had options, and the company had sold stock through myself and others to different people around New York and in Canada, and there was talk between us to the effect that we felt in honor bound, or in the interest of decency, to pay back to the people who had purchased stock, the money they had paid for stock in that corporation by reason of our inability to finance the thing; they were demanding that and in general we were acceding to those demands, and in that way to satisfy them as soon as we could. That was what I meant when I, McMurtry and Hoeppepner talked about locating lands in California to try to make enough out of the enterprise and in some way to pay the people. Yes, sir, that is, we were going to make [393—287] money ourselves personally in that way and personally satisfy the stockholders. Yes, buy their stock and pay them the money that they had paid out. No, at the time McMurtry left New York, I had no assurance that he would ever locate any lands under those powers of attorney, nor were any specific lands mentioned when he got the powers of

(Deposition of Julius F. Harder.)

attorney or when he left here. No, I knew of no intent on the part of the other locators and McMurry and Hoepfner to buy back or pay these people their money that they had invested in the Empire Company.

Redirect Examination.

Q. Mr. Harder, you were called as a witness for the defendants, were you not, in the trial of the suit A-38, United States vs. Thirty-two Oil Company?

A. Yes, sir. Q. Was not this question asked you by Mr. Lawler, at page 690 of the record: "Q. Was anything said to you at that time about his having received or about there having been paid or promised to have been paid any money on account of any contract made in regard to those lands?

A. No, not having been paid. He told me that there was enough money realized or to be realized to enable him to come to New York to meet what he referred to as the indebtedness, and that what we referred to as the indebtedness was the money due to the old stockholders of the Empire Oil & Development Company and his debts in New York, such as hotel and boarding-house bills which had never been paid at that time. Was not that question asked you and did you not make that answer? A. Yes, sir. Q.

At the same time and in the same examination, was not this question asked you, at page 698 of that same record: Q. Did he say anything in those conversations as to whether or not there had been any actual demonstrations or developments on [394—288] these particular lands that were covered by

(Deposition of Julius F. Harder.)

the new or later locations? A. I didn't understand from anything he said that the money he had was due to the production and flow of oil. Now, this money that he had was sufficient to pay off all the stockholders. That was something that I was insisting upon, that the first money that was received out here should be used to satisfy the clamoring and criticizing stockholders of the old Empire Oil & Development Company, and he told me at that time that he had satisfied all those, and that he had paid every dollar of every stockholder that had paid in any money for stock, with interest, and that he had also settled his hotel bills, and we were all clear of debt. He had gotten enough money from a lease or from a sale to satisfy all that. I think that entire indebtedness. And that sort of thing was completed on this 1911 visit. It was not all completed on the first one. Were you not asked that question, and did you not make that answer? A. Yes.

Q. In your cross-examination, Mr. Ach read a letter dated April 23d, 1914, from yourself to Mr. L. B. McMurtry, the letter being dated April 23d, 1914, in which you used the following language: "I have just had a call from Mr. J. McG. Williamson, Special Agent, U. S. General Land Office, Denver, Colo., and at his request have written him a letter, of which I enclose a copy, the contents of which speak for themselves." I now read from the record at page No. 736, the following, which was read by Mr. Lawler upon direct examination of the trial referred to.

(Deposition of Julius F. Harder.)

Mr. ACH.—Counsel for the defendants objects to counsel reading the letter referred to into the question, upon the ground that he is of the opinion that an objection to the offer of such a letter by the Government would be sustained on the ground that [395—289] it is not proper redirect examination, incompetent, irrelevant and immaterial, and that it is not proper or fair to insert the letter as read in the question. We insist on the objection.

The COURT.—The objection is overruled.

Mr. ACH.—Exception.

Mr. HALL.—That letter is as follows:

“April 23rd, 1914.

“Mr. J. McG. Williamson,

“Hotel McAlpin, City.

“Dear Sir:

“Pursuant to our conversation of this afternoon permit me to say in reply to your inquiries that I am personally acquainted with Messrs. L. B. McMurtry, E. A. Hoepfner and F. E. Harrison, all of San Francisco, I knew all of these gentlemen, and 12 or 15 others in addition, about 1906 and 1907 in New York City, in connection with the affairs of the Empire Oil & Development Company, of which I was then Vice President.

“This company went out of existence by reason of the business depression which culminated in the financial disasters of October and November of 1907. All three of the above-named gentlemen went to San Francisco for the purpose of safeguarding the assets of the company and McMurtry returned

(Deposition of Julius F. Harder.)

to New York a year or two later, paid all the debts in full and took up the outstanding stock of the defunct company to the satisfaction of all concerned, so far as my informatoin goes. I am not as deeply interested, nor so conversant with the affairs of these men and their enterprise as I was then, and I am not advised as to the specific enterprises in which they may now be engaged.

“I can speak in the highest terms, of their character and integrity. Messrs. McMurtry and Harrison I have known since [396—290] 1906. Hoepfner I have known intimately since 1891. I have never known or heard of anything derogatory either to their personal character and capacity or to their business enterprises or methods.

“I will be glad to give you any further information of which I may be possessed and trust that the above answers your inquiry.

“Yours truly,

“JULIUS HARDER.”

Q. Is the copy of the letter which I have read a copy of the letter which you referred to in your letter to Mr. McMurtry as having written to Mr. Williamson? A. Yes. Q. At the time you testified in suit A-38, was not this question asked you: “Q. Were you also willing that Major Hoepfner should have an interest in these locations at the time you made out your power of attorney? A. Yes, sir.” Q. Were you not asked that question, and did you not make that answer? A. Yes, sir. Q. Was not this question asked you? “Q. That

(Deposition of Julius F. Harder.)

was the understanding, was it not, at the time?

A. The understanding I had was that Mr. McMurtry and Major Hoeppner were to be locally on the ground and devote their energies to this business that we had on hand, and certainly sooner or later there would be an arrangement made as to what their relative interests would be." Q.

Were you not asked that question, and did you not make that answer? A. Yes, sir. Q. Then this question was asked you by myself: "Q. It is a fact, is it not, that at the time you executed this power of attorney and turned it over to Mr. McMurtry, you understood then that Mr. McMurtry and Major Hoeppner would have an interest in whatever locations of oil lands were made as a result of this power of attorney? A. Yes, sir." Were you not

asked that [397—291] question, and did you not make that answer? A. Yes, sir. Then you were asked this question: "Q. You had that same understanding, did you not, in 1910, when you gave this confirmation or ratification of the power of attorney for Mr. McMurtry in New York? A. Yes, sir." Was that question propounded to you and

did you not make that answer? A. Yes, sir. Q. Also was not this question asked you: "You had that same understanding, did you not, in 1911 when you received your Pacific Oil Lands stock? A. Yes, sir." Was not that question propounded to you and did you not make that answer? A. Yes, sir.

Q. Also this question was asked you, was it not: "Q. You had and have that understanding down

(Deposition of Julius F. Harder.)

to the present time, have you not? A. Yes, sir."

Q. If you had known in December, 1907, that Mr. McMurtry or any other person would, in the future, employ the power of attorney which you were about to and did execute for the purpose of acquiring title to more of the public domain than the General Land Laws of the United States permitted, would you have signed such an agreement? [398—292]

Recross-examination.

Q. Mr. Hall, when interrogating you from page 750, immediately preceding his last question, read you this: "Q. You had and have this understanding down to the present time, have you not?" Inquiring of you as to whether Mr. Hoeppner or Mr. McMurtry was to have any interest in the lands or locations of the property and you answered, "Yes, sir." He then stopped. Now, immediately following that answer is the following question: "Q. And you are still willing and still consent that Hoeppner and McMurtry may have an interest in all of those lands which were located under this power of attorney which you gave in December, 1907? A. Well, by 'interest,' I understand that you intend to convey the meaning of fair remuneration for their services rendered. Q. Participation, I mean, in the benefits to be derived from those locations. A. As represented in a fractional part of the returns coming from the business of the company." Did you so testify? A. Yes, sir. Q. And did you not understand all the time that you were answering that they were

(Deposition of Julius F. Harder.)

not to have an interest as he read to you, but that they were to have some reasonable remuneration, uncertain and unannounced, in any profits that might be returned from such lands? A. That idea underlay all my answers. Q. Now, Mr. Hall read to you from page 698, that you [399—293] had testified, and you admitted that you had, as follows: "A. I didn't understand from anything he said that the money he had was due to the production and flow of oil. Now, this money that he had was sufficient to pay off all the stockholders. That was something that I was insisting upon, that the first money that was received out here should be used to satisfy the clamoring and criticizing stockholders of the old Empire Oil and Development Company." Now, then, referring to the money that was received, didn't you then mean the money received by Mr. McMurtry and Hoepfner, and not the money that was received by or due or owned by people that did not have anything to do with the Empire or the sale of its stock? A. Certainly. Q. You certainly did not intend that money realized from property belonging to a number of other people should be used for and on behalf of Mr. Hoepfner or Mr. McMurtry? A. Certainly. I think I made that plain in my previous answer. It was money we would receive personally as profits. [400—294]

Deposition of Francis E. Pratt, for Plaintiff.

FRANCIS E. PRATT, called April 21, 1917, on behalf of the plaintiff, testified by deposition as follows:

Reside at 110 West 123d Street, New York City. Am an engineering salesman employed by the Leacock-Courtney Company, engaged in selling pumps. Am a graduate of the New York University and special course in Lehigh University. In December, 1907, I resided in the City of Mexico. Was engaged in the same line of business, having gone there in June, 1907, and remained five years. No, I was not in New York City in December, 1907. My employment with the Hammond Iron Works in Mexico brought me in touch with the mining world and I was very thoroughly familiar with the mining industry in Mexico, but not in the Western States of the United States, nor do I know anything about the oil industry at all. Have a general familiarity with the laws of Mexico with respect to the acquisition of Government mineral lands, but have no familiarity with the United States laws concerning the acquisition of public mineral lands.

Q. The records of Kern County, California, disclose that on December 19th, 1907, Francis E. Pratt, and a number of other persons appeared before George F. Handel, a Commissioner of Deeds of the City of New York, State of New York, and acknowledged the execution of a power of attorney.

(The substance of Plaintiff's Exhibit 6 stated.)

(Deposition of Francis E. Pratt.)

Are you the Francis E. Pratt who executed that document? A. I think I am; yes. Q. Did you appear before any official at that place, and acknowledge the execution of that document? A. I did. Q. When was that? A. Without— I could not tell you the date. Q. I want to be perfectly fair to you and I now exhibit a paper to you which I have had marked Government's Exhibit No. 27 for identification. Do you remember of having [401—295] executed more than one writing in the City of Mexico, or one instrument? A. I don't think so.

I remember having acknowledged the original of which this Exhibit No. 27 is a photographic copy, before Arnold Shanklin, Counsel General of the United States at the City of Mexico, August 29, 1910. That paper bears a reproduction of my signature. Yes, prior to acknowledging the paper of which Exhibit 27 is a photographic copy, I had executed other papers with respect to these McMurtry oil transactions. This was done in New York. I don't remember the date.

(Witness reads power of attorney, Plaintiff's Exhibit 6, being a certified copy of the original.)

My recollection is that I signed a paper of that kind.

Q. The paper itself, namely, the power of attorney, discloses that you appeared before George F. Handel or rather recites that you appeared before George F. Handel, in the county of New York, State of New York, on December 19th, 1907. Were you

(Deposition of Francis E. Pratt.)

in New York City, New York, or the county of New York, New York, on December 19th, 1907? A. No. Q. Where were you? A. In December, 1907? Q. December 19th, 1907? A. No; I was in the City of Mexico. Q. How long before December 19th, 1907, was it that you had been in the City of New York? A. In June, 1907. Q. How long after the 19th of December, 1907, was it that you were again in the City of New York? A. April, 1913, I think—no, 1912. Q. Was the question of the execution of this power of attorney taken up with you by anybody personally in the City of Mexico, or by letter to you in the City of Mexico? A. By letter, I believe.

I think Jack Thickers wrote me concerning that. I have not the letter and don't know what became of it. Suppose I [402—296] destroyed it when I left Mexico.

Q. Can you tell us what Mr. Thickers said when he asked you to sign this power of attorney, or whatever it was he sent to you while you were in the City of Mexico? A. No, I have no recollection. Q. Was this letter which was written to you by Mr. Thickers to the City of Mexico before or after the time you executed Exhibit 27 before Arnold Shanklin? A. About that time, I think. Have no recollection of receiving a communication from Thickers in December, 1907, in regard to these oil matters. Cannot give any explanation whatever as to why this certified copy of the power of attorney recites that I appeared before the notary in New York County, New York, on December 19, 1907. The first that my

(Deposition of Francis E. Pratt.)

attention was called to this oil land matter was when Jack Thicken explained the desires of Mr. McMurtry in the matter and asked me if I would sign this power of attorney.

Q. What desires of Mr. McMurtry did he explain to you? A. He desired to obtain some of these lands for himself and others.

That was shortly before I acknowledged that power before Arnold Shanklin in the City of Mexico. The letter, I mean, that he wrote; that is, the letter that he wrote in regard to this paper that I acknowledged before Shanklin. Received that letter very shortly before I acknowledged the paper before Shanklin.

Q. Was that the first time you had received any advice about these McMurtry oil land transactions. A. No. Q. When was the first time you received any advices about it? A. I cannot tell you the date, but some time before I left New York. In June, 1907.

It is hard to say just what I knew about those transactions at that time but I knew just what McMurtry wanted to do, and [403—297] why he wanted me to sign the power of attorney. He advised me through Mr. Thicken and him. Without having taken down what Thicken told me I don't know exactly what to say. He told me what the idea was, that I will be one of the locators, you might say, of these lands. I received \$250 in the form of a draft I think, when I signed this power before Counsel General Shanklin. It was a check.

(Deposition of Francis E. Pratt.)

Q. I now invite your attention to a check, in substance, as follows:

“No. 135. December 28th, 1910. Second National Bank of the City of New York. Payable to the order of Francis E. Pratt, for \$250. (Signed) F. H. Searls.”

On the back thereof appears the following in typewriting:

“Received from L. B. McMurtry, \$250 in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907.”

Now, that is signed, “Francis E. Pratt.” Is that your signature to that (showing witness)? A. Yes, sir.

That is the check that I received in the City of Mexico in 1910. Don’t remember as to any letter accompanying it. Yes, the typewriting read was on there before I signed. I read it. Don’t remember whether I received a letter other than one just saying “enclosed herewith check.”

Q. Did you know or did you have any information as to why the check was sent to you? A. Yes, Mrs. Thickens and my wife were intimate friends and frequently things were touched upon as in this case. This case was explained by Mrs. Thickens and my recollection is that Mr. Thickens also went into the [404—298] matter, and sent this check in what you

(Deposition of Francis E. Pratt.)

might say following up that explanation. I don't know exactly how to put it, except that it was for the purpose of concentrating control of the company with Mr. McMurtry, that Mr. McMurtry was to get it in one hand. That was the Empire Oil & Development Company, I think it was. No, at that time I had never heard of the Pacific Oil Lands Company, nor did I know how many locations of public lands had been made in California by McMurtry acting under the power of attorney of December 19, 1907, to which my name appeared as a locator, nor the extent of lands so located. No, I made no inquiry of anyone as to that or as to the state of development of these lands at that time. I think I knew in a general way that the lands were in Kern, or one of those counties in California. I presume I knew this when I signed the check. I hardly think I heard any more of this until I came back to New York City in April, 1912, then talked with Jack Thickers. Cannot remember what was said. The general idea was that these lands were located and that eventually those who had gone in with Mr. McMurtry would receive their due proportion. Don't remember that Thickers told me the number of locations that had been made or the area of the land covered. No, I did not then know what my interests in these lands was nor did I inquire of Thickers. Never made any inquiries of Thickers or anyone else by letter before I returned to New York. Don't remember finding any papers with respect to this matter after I returned to New York.

(Deposition of Francis E. Pratt.)

Q. Well, I invite your attention to Certificate No. 34, which we find in the original stock book of the Pacific Oil Lands Company, and attached thereto is a receipt which reads, "Received certificate No. 34 for 1000 shares of Pacific Oil Land Company. Dated September 27, 1911. Francis E. Pratt." Q. Are you sure [405—299] about the date when you returned to New York? A. I am not sure, but I think it was about the 22d or the 23d of April, 1912. Q. How was this certificate No. 34 of the Pacific Oil Lands Company delivered to you? A. By mail. My recollection is that I received the stock from Thickers. Yes, a letter accompanied it. I suppose I destroyed the letter. Don't remember what it said. I became a stockholder in the Pacific Oil Lands Company probably because of my interest in the work that McMurtry had done. Think I sent the receipt for this stock back to Thickers. Don't recall having executed any other papers after receiving this stock or after returning to New York.

(Plaintiff's Exhibit 27 read into deposition. It is a ratification similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman and purports to have been executed by Francis E. Pratt, August 29, 1910 at Mexico City.)

(Plaintiff's Exhibit 28 read into deposition. It is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman and purports to have been executed by F. E. Pratt, August 13, 1913 at New York City.)

Yes, Exhibit No. 28 bears my signature, and I re-

(Deposition of Francis E. Pratt.)

member distinctly executing it. Presume it came to me through Thickens. Have no distinct recollection as to the circumstances concerning its execution. My recollection is that I was about to go to South America, and it was considered best to, for Mr. McMurry to have my proxy at those meetings. [406—300]

Yes, I went to South America. Went November 29, 1913, and remained about two years. Yes, I executed the papers in connection with this transaction while there. Yes, I executed that paper (Plaintiff's Exhibit 29) at Rio de Janeiro. Received it through the mails from Thickens. Don't remember that a letter accompanied it. Have no such letter. Don't remember why it was sent. Returned it to Thickens.

(Plaintiff's Exhibit 29 read into deposition. It is a consent to dividend similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman and purports to have been signed by Francis E. Pratt, December 28, 1913.) [407—301]

Yes, I received money in connection with these oil land matters while in Rio de Janeiro. My recollection is that it was \$250. Don't remember when this was. Yes, remember receiving a draft for \$20 shortly after I executed this consent on December 28, 1913. This \$20 was transmitted to me by Thickens in the form of a check or draft.

Q. I invite your attention now to a check which is in substance as follows:

“San Francisco, 1/28/14/ No. 1234. The Bank of California, National Association, San

(Deposition of Francis E. Pratt.)

Francisco. Pay to the order of Cash, \$20.00.
Pacific Oil Lands Co., by F. E. Harrison, Secy.-
Treas. L. B. McMurtry, Vice-Pres."

On the back thereof, I find, in pencil, the following endorsement: "Dft. Francis E. Pratt." Is that your signature on there (showing witness)? A. No. Q. Did that check ever come into your possession? A. I don't remember. Yes, I think I remember receiving a payment of \$20 in connection with these matters from Thickens about that time. It was sent me as dividend of the Pacific Oil Lands Company. [408—302] I kept my certificate of stock No. 34 in this company a year and a half or two years then I transferred it to Mr. McMurtry, I think. That is my signature to the transfer on said certificate. Don't remember where I was when I signed or whether or not the name of Walter S. Brann was typewritten in on the back of the certificate at the time I signed it, or the name of the witness Robert B. Staunton, Jr. I must have signed that while in Rio de Janeiro. Thickens requested this by cable. This was simply a request to return the stock signed. I signed it and sent it to Thickens. Think I received \$250 by draft for so doing. The explanation for wanting this assigned was to concentrate control of the stock for purposes of business in McMurtry. Received this information from Thickens. No, I did not then know how many locations had been made under this power of attorney or the extent or area of land covered by such locations or the value or

(Deposition of Francis E. Pratt.)

state of development of such lands, or who was in possession of the lands. No, I made no inquiries on these subjects nor did I receive any advice or information thereon. No, I did not at that time know about any contracts between McMurtry and Herrin and others that were dated August 4, 1910, August 6, 1910, or contracts dated some time in the year 1913, nor did I know what the resources or assets of the Pacific Oil Lands Company were. The next I heard of these transactions, I think, was after I returned to New York, which was in October, 1915. My recollection is that Thickens then told me things were going all right and eventually we would hear of some money coming out of the transactions that had been made. No, have never received any money since then or anything else of value. No, at the time of transferring this stock represented by certificate No. 34, I did not know who the stockholders in the Pacific Oil Lands Company were. That was the [409—303] only stock I ever owned in that company. Never discussed this matter with anyone but Thickens. Don't think I knew Harry B. Thorn in the City of Mexico; nor do I remember of seeing him there. He was not associated with me in business. He was not in Rio de Janeiro that I know of.

Cross-examination.

Yes, I think I have always read everything I signed. No, I did not know J. C. Thickens, the father of Jack, Mark W. Hatch, Hamlin E. Hatch,

(Deposition of Francis E. Pratt.)

T. R. Bailey, Walter Wilson, J. E. Farrell, or George F. Handel. Before going to Mexico City my office was at 45 Broadway, New York. Had then known Jack Thickers several years. He came to my office at times and I think I have seen him at the office of the Empire Oil & Development Company, Barclay Building, 299 Broadway.

(Certified copy of power of attorney, Plaintiff's Exhibit 6, handed witness to read.)

Q. Do you now recall reading a paper of similar import before putting your name to it somewhere in the world? Please answer. A. No. Q. You stated to Mr. Hall in answer to his question which was to the effect that the records of Kern County, California, showed the recordation of the power of attorney by which you authorized Mr. McMurtry to locate and develop, etc., mineral lands for you and in your name and you stated that you were the Francis E. Pratt referred to in that power of attorney; do you remember making that answer? A. Yes, sir. Q. Was that true? A. To the best of my recollection. Q. And then when he did ask you the question you had a recollection of signing the power of attorney to Mr. McMurtry, authorizing him for you and others to locate mineral lands; is that true? A. Yes, sir. [410—304] Is not this the one? Q. Yes, that is what I contend. Now, I ask you whether the reading of that power of attorney causes you to remember the fact that before the signing of the power of attorney that you did sign, that it was a paper of the same import,

(Deposition of Francis E. Pratt.)

the same meaning, as the certified copy which I have now asked you to read (showing witness)?

A. Yes. Q. And if you answered to the contrary a moment ago to my questions, you misunderstood me, did you? A. Yes, sir. Q. Have you in your

lifetime ever given anybody else a power of attorney to locate mineral lands for you and in your name? A. No, sir. Q. Have you a distinct and

positive recollection in your mind that at some time, somewhere in the world, you did give Mr. Mc-

Murtry power of attorney, with other people, to locate mineral lands for you? A. Yes, sir. Q.

Now, if you can, kindly tell us where you signed the paper which you think was a power of attorney

to Mr. McMurtry to locate mineral lands? A. It was New York. Q. Now, is there no means at

your hand by which you can ascertain positively and definite the exact date when you went to

Mexico? A. It was about June 15th, 1907, that I took the boat to New Orleans. Yes, I once lived

at New Rochelle, New York. Yes, I have met Jack Thickers on the train coming from New Rochelle,

to New York City, and the question as to that does not refresh my memory.

Q. Don't you see, Mr. Pratt—and I state this thing to you because I want to be fair with you,

and because I know Mr. Hall wants to be fair with you, and we are simply desirous of getting at the

fact—

Mr. HALL.—Yes. I want to say now that I left this witness in this shape, that is, on the record,

(Deposition of Francis E. Pratt.)

because it was a surprise [411—305] to me, and I didn't know anything about it. I don't want the criticism made about leading questions; and I ask counsel now to have the opportunity of cross-examining to try and get some explanation of the apparent discrepancy.

Q. Don't you see, Mr. Pratt, this power of attorney is dated the 19th of December, 1907, and you say you signed it in New York City, and in December, 1907, according to your statement, you were in Mexico, and did not return until some time in 1912, and according to the advice of Mr. Hall and myself—and I only state this to give you an opportunity to state the manner, so far as developed by this record—prior to June or July, 1907, the matter of executing powers of attorney and locating these lands had not been broached by anybody here, and either you did not sign this power of attorney at all and your signature is a forgery, or it must have been sent to you in Mexico. Do you get the idea? A. Yes, sir. Q. Now, kindly think about the matter a little bit, so that we can straighten the thing out and so that we will know what the real facts are in the matter, and in doing so kindly remember that you also acknowledge that you signed this ratification of the power of attorney which you read before signing, and in which you ratified the power of attorney which you gave in December, 1907, which was recorded, and under which contracts were made for you, according to the paper. Now, try and remember and help us

(Deposition of Francis E. Pratt.)

out in this matter, and tell us if it is a forgery, or account for the error or mistake in some sort of way? A. It certainly is no forgery. Q. You say that because you definitely remember signing the power of attorney? A. Yes, sir. Q. Now, account for the discrepancy in the dates, if you can? A. I don't think I can. Q. Is it possible you went away in 1908? A. I don't think so. [412—306] Q. Will you kindly look it up and see if that is not so? A. My recollection is very clear that it was the year of the panic, in 1907, that I lost my position with the Almy Motor Tube Boiler Company, in February, and that in June I decided to go to Mexico, and I took the steamer to New Orleans and then to the City of Chihuahua.

Took the steamer "Creole" at New York, went to New Orleans, thence to El Paso. Never was a stockholder in the Empire Oil & Development Company that I know of. Jack Thickens first spoke to me about these oil land locations in New York before I went to Mexico. I don't think I know C. W. Thorn. Jack Thickens never asked me to buy any stock in the Empire Oil & Development Company, nor did anybody else. No, Jack Thickens, at the time he spoke to me about these oil lands in California, did not undertake to tell me what the law was as to persons having a right to locate in groups of eight persons. Yes, my recollection is that when he asked me for this power of attorney he told me that McMurtry was going to California and was going to, if he could, locate

(Deposition of Francis E. Pratt.)

oil lands for those who gave him powers of attorney. That is my recollection. Yes, I knew when I signed that ratification that I was ratifying the power of attorney which I had theretofore given and the contract made under that power of attorney. Yes, my wife was acquainted with Mrs. Jack Thickens. The families had social relations and my wife frequently called at the house of Thickens and they were frequently at our house in New Rochelle. No, I was not surprised to see this ratification for acknowledgment. I think before receiving this check for \$250 while in Mexico, I had met F. H. Searls. Had [413—307] no business relations with him. Had just casually met him and knew that he was connected in some way with McMurtry. Yes, I will make investigations for the purpose of determining when I actually left New York City for Mexico. No, when I executed that power of attorney and signed that ratification, I had no intention of defrauding the Government or of permitting the use of my name to permit any person to obtain more mineral land than they were entitled to. Yes, when I signed that power of attorney I had in my mind the actual intention that McMurtry should for me and in my interest locate oil lands in California, if he thought advisable. No, I don't remember that Thickens or anyone else told me that McMurtry or Thickens was to have any ownership or interest in such locations or that I was not to have the ownership of any lands that were located in my name by McMurtry.

(Deposition of Francis E. Pratt.)

Yes, I believe I remember that when I received that check dated December 28, 1910, Thickens wrote that it was a dividend check coming out of the avails of the contracts which I had ratified and asked me to endorse the receipt on the back so that the affairs of the locators could be handled to good advantage through some company that McMurtry was going to organize, or words to that effect. I think I remember that is a fact but I will not swear to it. No, I don't think I understood that by putting my name on the back of that check I was giving up all my interest in the lands that had been located by McMurtry in my name. Yes, I kept the money realized from that check. Yes, some of my information came from correspondence between my wife and Mrs. Thickens in a general way. This receipt attached to the stub of the stock certificate No. 34 bears my signature and when I signed it. Yes, my recollection [414—308] is that I was advised that a company had been formed by the locators of the lands and that the land had been transferred to the corporation, and that the certificate represented my interest as a locator. No, there was no other reason given me for sending me this stock. I had not purchased any stock of the Pacific Oil Lands Company. No, I do not know Major Hoeppepner or F. E. Harrison. Never knew how much stock Hoeppepner acquired in the Pacific Oil Lands Company or how much McMurtry acquired. Don't remember that I was informed how many locators received stock. Yes, I knew when

(Deposition of Francis E. Pratt.)

I signed the ratification that these contracts and conveyances were mentioned therein, but I think I have explained that I didn't know personally that any contracts had been made. Yes, I think I can say that at the time I received the stock and at the time of selling it, I understood that all the lands that were located in my name and in the names of the other locators had been acquired by the Pacific Oil Lands Company, including the contracts which I ratified, and that my shares of stock represented my interest in those resources.

Mr. HALL.—I don't want to interrupt you, Mr. Ach, but the fact is that all the lands which had been located by the use of this gentleman's name, had not been transferred to the Pacific Oil Lands Company. The only things which had been transferred to this Pacific Oil Lands Company were the contracts which were made with Herrin and others, and the Associated Oil Company.

Mr. ACH.—I know, but they transferred the lands, because if the Associated Oil Company and these people did not carry out the contract, the rights of the locators who had executed the contracts, went to the company. [415—309]

Mr. HALL.—I don't quibble about that, but the fact that there were many other locations upon which his name had been used were not affected at all by this contract.

Q. Did you know that certain lands in San Benito County had also been transferred to this company? A. No. Q. They did not advise you of

(Deposition of Francis E. Pratt.)

that? A. No. Q. Do you know how you got the \$20 dividend that was sent to you; you said it was either a check or draft; do you know whether it was paid to you in cash by anybody, or whether you received a letter in connection with it? A. I don't remember it distinctly.

(Plaintiff's Exhibit 29 handed witness.)

Yes, I read that before signing it and presume that I understood that the \$20,000 had been realized as surplus at that time by the Pacific Oil Lands Company, and that they wanted my consent as one of the locators and stockholders to an early distribution thereof.

Q. Is it not a fact that you received a draft from Mr. Thickens for that money while you were in Rio, and in connection with that question I show you a report bearing the initials of "N. A." and "F. H." in the left-hand upper corner, and dated in pencil "Jan. 1914," entitled, "Pacific Oil Lands Company, First Report to Stockholders." Look at it carefully and read it, if you want to, and tell me whether you received a copy of that report at the time you received the \$20 from Jack Thickens?

Mr. HALL.—I want the record to show that I did not intentionally overlook that matter, and that that is the report I referred to before.

Mr. ACH.—Yes, sir.

Mr. HALL.—It simply slipped my memory at the time, that is all. [416—310]

A. I think I received a copy of that report.

Q. And you read it when you received it, did you

(Deposition of Francis E. Pratt.)

not? A. Yes, sir. Q. Now, subsequent to receiving that report and that dividend, you endorsed certificate No. 34 and sent it to Mr. Thickens in New York? A. Yes, sir. Q. You therefore had the certificate of stock with you in Rio? A. Yes, sir. When I returned to New York from Rio de Janeiro in 1913, Thickens talked to me in a general way about what was being done by the Pacific Oil Lands Company. Don't recall that he mentioned possible trouble with the Government concerning these locations or the depreciation in the price of oil, or anything of that kind. No, I didn't ask Jack Thickens anything about the value of this stock when I came back from Mexico and before going to South America, nor did he say anything to me about the possibilities of making money out of that stock or the locations at that time. What he told us, however, was encouraging: "That some time all the locators would make some money." Was in this country traveling out of New York, about a year and a half after returning from Mexico before going to Rio de Janeiro, but did not have many interviews with Thickens or anybody else concerning these oil land matters. My recollection is that when Thickens cabled me at Rio to send him this stock, that it was simply a request to send it on, I had sufficient confidence in him to do so. Yes, subsequent to this I received a letter from him enclosing a draft or check for \$250. No, he did not say what he had done with the stock. Yes, he said, according to my recollection, that other

(Deposition of Francis E. Pratt.)

moneys would be coming to me and that this was simply for the purpose of properly manipulating the business of the corporation. Yes, sir, [417—311] that is my present recollection. Yes, since my return from Rio in August, 1915, I have talked this matter over in a general sort of way with Thickens, but never asked him what he got out of it. Don't remember that he told me that there was still money coming to me out of my interest in these lands, but my idea was that there was still money coming. Yes, I still have that idea. Don't remember that I ever executed any instrument modifying or setting aside the power of attorney to McMurtry authorizing him to locate lands for me. Yes, it is a fact that Thickens told me that if McMurtry located lands out there for me and for the other locators that he would endeavor to cause some person some persons for an interest in the product, or the land, to develop it without expense to the locators, if possible, and I understood in a general way, that under the law, assessment work was to be done after discovery of placer mining claims. I don't know that Thickens said in so many words that McMurtry would find somebody to finance all of the expenditures for the locators, but that is the impression that I got. Yes, I understood that I was giving McMurtry full rights to make contracts concerning the locations and to develop them and obtain means to do so. Yes, even to mortgage the lands.

(Deposition of Francis E. Pratt.)

Redirect Examination.

No, I never was asked to advance any money to be used in the development of oil upon any of these lands or for the purpose of protecting or holding these lands.

Q. If you had known at the time you were asked to sign the power of attorney that you afterwards did sign that it would become an instrument in the hands of any person to [418—312] acquire lawfully, would you have signed such a power of attorney? A. No, I don't think I would.

Cross-examination (Continued).

Q. Have you made a search or research among your papers in any way to ascertain the year and time that you left New York to go to Mexico for the first time? A. I went to the Southern Pacific Railroad Company, which runs the Morgan Line, and they told me that the date the "Creole" left was June 17th, 1908, and my name was on that passenger list. Q. And you left in 1908, and not in 1907; is that right? A. Yes, sir. Q. I want to ask you one question; since you have been put upon the stand Mr. Harry B. Thorn has been upon the stand in this matter, and he testified—and I simply state these facts to you because both sides want to refresh your memory, if it is to be refreshed, or to determine the circumstances attending the transaction—

Mr. HALL.—I agree with that statement.

Q. That he got a letter from either Searls or his father—

(Deposition of Francis E. Pratt.)

Mr. HALL.—From his father.

Q. Sending down to him the ratification to be signed by himself and yourself; that you were out in the interior at some mines, but that Mrs. Pratt was living in the City of Mexico, and that he took the letter and ratification which you acknowledged before the Consul-General, and left it with Mrs. Pratt? A. Yes, sir. Q. For her to send to you and for you to send it north, or to send it to San Francisco, wherever the occasion was; and also he testified that subsequently, in 1910, after the ratification, I think in December, 1910, that he met you personally in the City of Mexico and personally turned over to you the letter which he [419—313] received from either his father or Searls, with a check for \$250, to you; that he came north and got married and went back to Mexico with his wife, and while there, called upon you and your wife at your house. Now, do these statements of fact testified to by Mr. Thorn, refresh your memory in any way? A. They do, yes. I had forgotten entirely that Mr. Thorn was in the City of Mexico and called on me, because I had never known Mr. Thorn, and it was only a casual call. A. That is right. A. Now, I do remember. Q. Do you remember that you did meet? A. Yes, sir, that I did meet him in Mexico. Q. And so you were mistaken then the other day when you said you had not seen him or met? A. Yes, sir, but I did not remember, I did not remember, that he turned the check over to me at that time; I don't know; I

(Deposition of Francis E. Pratt.)

won't testify that he did not. Q. You won't?

A. No. His memory is better than mine in regard to that. Q. How about the ratification; do

you remember now that I have made the suggestion as to what he testified to, that Mrs. Pratt held it for you, or sent it to you, wherever you were?

A. My recollection is rather vague on that, but I remember I was in Guanajato for a considerable time about that time, and whether she held it until I came back, or sent it to me at Guanajato, for me to return to San Francisco, I don't remember.

Redirect Examination (Continued).

No, I still have no recollection of the actual execution of this original power of attorney. Thickens presented it to me, but I don't remember what was said at the time. My recollection is rather hazy as to that time. [420—314]

Deposition of Harry B. Thorn, for Plaintiff.

HARRY B. THORN, called April 21, 1917, on behalf of plaintiff, testified by deposition as follows:

I reside at Bellaire Gardens, Queens, Long Island. An a structural engineer employed by the Chili Exploration Company, at No. 120 Broadway. In December, 1907, was living at my father's home in Yonkers, and was a structural draftsman employed by the Thompson-Starrett Company at 49 Wall Street. Am thirty-four years of age.

Q. The records of Kern County, California, disclose that on December 21, 1907, Harry B. Thorn

(Deposition of Harry B. Thorn.)

and others executed before Samuel C. Worthen, a notary public in New York County, State of New York, a power of attorney. (Substance of Plaintiff's Exhibit 5 stated.) Are you the Harry B. Thorn who executed that instrument? A. I am.

Mr. McMurtry was a friend of my father. C. W. Thorn and my father came to me and told me that it was a chance to make good on some supposed oil lands out in California, and wanted to know if I wanted to go in on the speculation and give McMurtry my power of attorney. I had no business relations with McMurtry. No, I was not interested in the Empire Company. Don't think any time elapsed between the time my father spoke to me about this and the execution of the power of attorney because I was only too glad of a chance to take it up. Yes, I read over the power before signing it. Yes, I frequently had conversations with my father about the matter after signing. The next paper I signed in this connection was about three years later. During that time I had made occasional inquiry of my father as to how the proposition was coming along. Cannot [421—315] remember what information father gave me prior to January 1, 1909, except in 1909 some time, I think it was in 1909, some time, in speaking of the developments down there—not with respect to my signing of the power of attorney, but in talking over the the development he told me that Mr. McMurtry on behalf of the locators had gotten some people, I believe he called them the

(Deposition of Harry B. Thorn.)

“McLeod crowd,” to take over a certain portion of the property to drill some wells. He said that it was costing so much to keep up the assessment work, that it was found necessary to get the McLeod crown to come in and help get the patents to the extent of driving the wells. Cannot say what time in 1901 this was. The next paper I signed was in 1910. I was in Mexico at the time, and my father wrote me enclosing a paper to sign, as a ratification of this power of attorney, both for me and Mr. Pratt, who was down there at the time, and that I sign it and get the American Consul to witness my signature. Pratt’s paper was sent to me, because father knew he was in Mexico, and didn’t know just where he was, because he was out at the mines. I did not know Pratt and did not see him at that time. Went to the address and found his wife and left the ratification with him. Saw him later. (Plaintiff’s Exhibit 30 shown witness.) Yes, I believe that is a copy of my ratification. That seems to be a photographic copy of my signature. Think I sent the ratification direct to California. These ratifications came through the mail with a letter. Don’t know what has become of the letter. Have looked, but cannot find it. He explained to me the development of affairs, saying there was still trouble in getting money enough to go ahead with the assessment work, and it seemed best to sell certain holdings to the Associated [422—316] Oil Company, and the Associated Oil Company before they signed any agreement, while

(Deposition of Harry B. Thorn.)

they were satisfied with the records, they wanted to verify our power of attorney to see that we were real locators, and still had Mr. McMurtry as our agent there.

Q. At that time, did you have any information in regard to the lands that were being affected by the contract between Mr. McMurtry and Mr. Herrin, of date August 4th, 1910? A. Naturally I was not familiar with the geography there, and I cannot say that I can tell by the lot numbers or anyway, anything definite, what the lands were, or where they were. Q. Did you know how many quarter sections of land were affected by that contract? A. By that contract, about 1,440 acres, as I remember it. Q. When did you learn that fact? A. Through my previous conversations with my father in finding out what Mr. McMurtry was doing down there.

I believe that was part of the letter father wrote me. I knew there were several tracts, a total of 2,080 acres, I believe. I found that out from time to time. It was cumulative information, I guess, obtained from my father before I went to Mexico. Yes, I believe there were other lands besides this 280 acres upon which my name appeared as a locator. I believe there were 640 acres in San Benito County. I don't recall any other now.

Q. Was it your advice and information at that time that your name appeared as a locator upon all the 2,080 acres, and these 640 acres in San Benito County? A. No, the only section—only certain parcels. I believe my name appeared on a quarter

(Deposition of Harry B. Thorn.)

section, of each quarter section located. Q. When was it you first learned that your name had been used on a quarter section of each section that had been located? A. That I cannot say. Q. Well, [423—317] was it before you signed the ratification or afterwards? A. As I said before, my knowledge of the development down there was cumulative through conversations with my father. I cannot put any date on one piece of knowledge that I gained.

This knowledge was memoranda up to the time I finally released my stock in 1914. I received \$250 in about December, after I executed the ratification in August, 1910, I believe it was.

Q. I invite your attention now, Mr. Thorn, to a check in substance as follows: No. 134, New York, December 28, 1910. Second National Bank of the City of New York. Pay to the order of Harry B. Thorn, Two hundred and fifty dollars. (\$250.) F. H. Searls." On the back thereof I find the following in typewriting: "Received from L. B. McMurtry, \$250 in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 21st day of December, 1907." And just below that is the signature of "Harry B. Thorn." Is that your signature (showing witness)? A. Yes, sir. Yes, that is the check referred to. This typewriting was on the back when I signed it and I

(Deposition of Harry B. Thorn.)

read it. This check came to me by mail in the same letter that Mr. Pratt's came. Think father sent it. I have not the letter. The substance of it was: There was explained to me further at that time that the land had been sold to the Associated Oil Company, and the terms of the sale were something over two million dollars, \$2,200,000, I think, to be paid at the rate of twenty cents per barrel out of production, if there was production; if not, then the lands could be reverted to the original locators. [424—318] Don't remember what information was given as to why the check for \$250 was sent me. I don't remember anything having been said definitely, except that naturally we were to profit by and money accruing from our development there. Yes, development of these lands that had been located in my name. Don't remember of any particular statement as to the sources of this \$250. I naturally assumed it was from the sale of the lands to the Associated Oil Company. Probably it did state in the letter, but I cannot remember now just what that letter was. I telephoned Pratt and he came down and got his check. I showed him the letter, and said it was self-explanatory. There was no talk between us. We were not then acquainted. I was in Mexico from 1909 until June, 1911. Heard no more of this matter while there. Shortly after returning to New York I received 1,000 shares of stock in the Pacific Oil Lands Company. That certificate No. 31 of the Pacific Oil Lands Company looks very much like the certificate which I had. It

(Deposition of Harry B. Thorn.)

was delivered to me by my father personally. That is my signature on the receipt of the stub of certificate No. 31 dated September 15, 1911. I signed that receipt on September 15, 1911, which was the time I received the certificate from my father. He told me that it seemed best, in order to handle the situation, to form a company of the locators and to issue stock and that was considered to be my share, and I was asked if that was satisfactory, and I said it was. No, I don't think I knew that at that time the resources or assets of the company, except the original terms of the sale, and the money coming in from the sale of each barrel of oil; that was as far as I knew; just what the amount was, I did not know. Yes, I must have been advised at that time that the contracts with Herrin and others or with the Associated Oil Company, [425—319] had been assigned to the Pacific Oil Lands Company. I cannot recall whether I knew at that time how many shares of this stock had been issued to McMurtry or A. E. Hoeppner. I think my father went over that with me in order to get my answers as to whether I was satisfied with my shares, and I remember in a general way what it was, but I cannot remember now what the actual number of shares was to any one person. The next I recall. I believe there was a meeting called in 1913 of the stockholders, and I was sent a proxy to sign over.

Yes, that is the proxy referred to. (Plaintiff's Exhibit 32.) Cannot recall whether father gave that to me personally or whether I received it

(Deposition of Harry B. Thorn.)

through the mail. I executed it and sent it to McMurtry. The only conversation between my father and myself at that time that I recall is that there was to be a meeting of the stockholders; I cannot remember any special business that was to come up. Cannot recall receiving any additional advice at that time as to the condition of the company and the lands that it was holding.

(Plaintiff's Exhibit 30 read into deposition. It is a ratification similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman and purports to have been executed by Harry B. Thorn, August 20th, 1910 in Mexico City.)

(Plaintiff's Exhibit 31 read into deposition. It is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman and purports to have been executed by Harry B. Thorn, August 12, 1913, in New York City.) [426—320]

The next transaction I recall is that shortly after the meeting, which I believe was deferred, I received a letter asking me to either confirm the action of the meeting, or vote on the distribution of certain proceeds. Yes, I think I have that letter. (The same produced and offered in evidence as Plaintiff's Exhibit 32, with the deposition, is as follows:)

Plaintiff's Exhibit No. 32.

“December 3, 1913.

“PACIFIC OIL LANDS CO.

“Dear Sir:—

“You are the holder of 1000 shares of the capital

(Deposition of Harry B. Thorn.)

stock of the Pacific Oil Lands Company. The corporation has \$20,000.00 in cash assets which it wishes to divide among its stockholders, but under the laws of the State of California the Board of Directors cannot do so without the consent of all of the stockholders of the corporation.

“We herewith enclose you a written consent to be signed by you immediately and returned to us. The majority of the stockholders have already given their assent to this proposition, and when all of the stockholders have consented, the dividend will be declared and your proportion thereof will be at once forwarded to you. There will be other amounts from time to time that can similarly be divided without injuring the business of the corporation.

“Please attend to this matter promptly.

“Very respectfully yours,

“PACIFIC OIL LANDS COMPANY,

“By F. E. HARRISON, Secretary.”

Yes, Plaintiff's Exhibit 33 is the consent referred to in said Exhibit 32. (Plaintiff's Exhibit 33 offered and read into the evidence with the deposition is as follows:) [427—321]

(This is similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman and purports to have been signed by Harry B. Thorn, December 9, 1913.)

No, at the time I signed Exhibit 33 I did not receive any advice as to the condition of the affairs of the company, except that they had \$20,000 to distribute. I afterwards received a check for \$20,

(Deposition of Harry B. Thorn.)

which, I understood, was my proportion of the \$20,000.

Q. I now invite your attention to a check as follows: "San Francisco, Cal., 1/8/1914/ No. 1194. Bank of California, National Association, San Francisco. Pay to the order of Harry B. Thorn, Twenty dollars. Pacific Oil Lands Co., F. E. Harrison, Secy. & Treas. L. B. McMurtry, Vice-Pres." And that is endorsed on the back, "Harry B. Thorn." Is that the check you have referred to (showing witness)? A. Yes, sir. Yes, there was a letter of transmittal with that check, which I hand to you. Said letter is marked Plaintiff's Exhibit 34, and offered and read in evidence with the deposition, and is as follows:) [428—322]

Plaintiff's Exhibit No. 34.

"January 8, 1914.

"PACIFIC OIL LANDS CO.

"Dear Sir:

"Inclosed you will please find dividend check for \$20.00, the same representing your *pro rata* of the first distribution to the stockholders of the company of cash assets amounting to \$20,000, and to which distribution we hold your written consent.

"Accompanying this letter you will also find a statement covering the affairs of the company. This also, we feel sure, will prove of great interest to every stockholder.

(Deposition of Harry B. Thorn.)

“Wishing you a very happy and prosperous 1914,
we beg to remain,

“Very truly yours,

“PACIFIC OIL LANDS COMPANY,

“By F. E. HARRISON,

“Secretary.”

Yes, there was a statement of the condition of the company accompanying that letter, which I produce. (The same marked Plaintiff's Exhibit 35 and made a part of this deposition is a copy of the statement which has been heretofore referred to as Pacific Oil Land Company's First Report to the stockholders, marked in the upper left-hand corner “F. H.” and “H. A.,” and in the upper right-hand corner in pencil “Jan. 1914,” is as follows):

Plaintiff's Exhibit No. 35.

**PACIFIC OIL LANDS COMPANY FIRST
REPORT TO STOCKHOLDERS.**

For a number of years prior to January, 1909, L. B. McMurtry and associates had located and re-located some twenty-eight hundred and eighty acres of supposed oil bearing Government land in the Midway Field, Kern County, California, in accordance with the mining laws of the United States.

Because of lack of funds to prosecute the development work on these lands necessary to hold the title as required by the laws of the United States referring to mining location like these, Mr. McMurtry was obliged to transfer to [429—323] third parties who were financially able to do the work one-half, or fourteen hundred and forty (1440) acres of

these lands. After this was done began a struggle to hold the remaining fourteen hundred and forty acres. At great personal sacrifice and effort on the part of Mr. McMurtry the lands were held and the work necessary to keep the possessory title good was done up to the early part of 1910; then the situation became very desperate. Mr. McMurtry had done all the work he could to preserve the rights to the land, but his efforts and those of the persons with him were not sufficient to do all the required work. Furthermore, all the sources from which money could be borrowed had been exhausted, and Mr. McMurtry found himself without funds to do any more work and without the means of raising any more money. It looked then as though all of the lands would be lost, and as though all the work and hardship undergone had been to no purpose.

Just at this time, and as a last resort, Mr. McMurtry fortunately made an arrangement with the Associated Oil Company of California by which this company agreed to take over the fourteen hundred and forty acres of land; to do all of the work necessary to preserve the title to the lands and to pay therefor to Mr. McMurtry out of the oil produced from the land, if any, twenty cents per barrel. The company, however, had the right to abandon any part of the land at any time and turn it back to Mr. McMurtry, and there were also many other onerous conditions in the agreement which it is not necessary to detail here. Suffice it to say that it was the best agreement that could have been gotten at the time in view of the great danger that was threaten-

ing the loss of all of the lands. It was the only thing to do to save what we now have.

There were many people whom Mr. McMurtry felt should be beneficiaries of this agreement which he had made. There were the locators (prior and recent); there were the people who had given money to aid in carrying on the work of holding the lands until they were sold; there were those who had worked and watched night and day to see that hostile parties had not jumped the lands and taken them away; there were men who had labored on the lands doing the assessment work; and finally there was Mr. McMurtry himself, and Mr. Hoepfner, the first of whom had conceived and carried out the plan of getting and holding the lands, and the latter of whom had done yeoman's work in keeping off trespassers and jumpers.

In order that all of these people should share in this contract with the Associated Oil Company, the Pacific Oil Lands Company had formed, August 17, 1911, and its stock was divided up among the various people above named, or provision made to reimburse such as were given no stock. To this company Mr. McMurtry transferred his contract with the Associated Oil Company covering the fourteen hundred and forty acres of land and 640 acres of land in San Benito County and [430—324] the stock of the company went to those who had contributed in any way to getting and holding the lands.

In the working out of this contract various difficulties presented themselves to the Pacific Oil Lands

Company. It was hard to keep the Associated Oil Company drilling all the time; there were difficulties in regard to getting at the amount of production on which twenty cents a barrel should be paid; and worst of all, there was always the chance of having the land rejected and turned back to the Company.

Finally, in August of 1913 a new agreement was negotiated by Mr. McMurtry, acting for this company with the Associated Oil Company, by which the Oil Company agreed to pay for the fourteen hundred and forty acres of land one million three hundred seventy-five thousand (1,375,000) dollars, seventy-five thousand (75,000) dollars down and the balance in monthly installments of twenty thousand (20,000) dollars per month. This contract for the first time gave the Company an assured definite amount available, and left only one opening by which future payments shall be defeated. That is, if the Government shall take away the land sold, the payments under the contract stop from the date of such taking away, and there is no further obligation on the part of the Associated Oil Company to make any more payments.

In this connection it is well to state that up to the present time no title to any of the lands sold has been obtained from the Government. The Associated Oil Company simply holds possession of the land, but we believe everything has been done to entitle it to the patent. However, there is always the danger of the Government refusing to grant patents

to the land, in which event all our rights under this contract shall cease.

As to what the future will develop, we do not pretend to know, but we hope for the best, believing, as we have said, that everything has been done that could be reasonably done under the laws of the United States in regard to acquiring title to these Government oil lands.

ANNUAL STOCKHOLDERS' MEETING.

The annual stockholders' meeting of the company was not actually held until November 17th, 1913, the same having been adjourned from the date of call, August 18th, 1913, to that date to insure a quorum being present.

At said meeting the following directors for the ensuing year were elected: L. B. McMurtry, E. A. Hoeppner, F. E. Harrison.

The President of the company presented, at said meeting, the following report showing receipts and disbursements of the funds of the company from the date of [431—325] organization, August 17, 1911, to August 1, 1913:

RECEIPTS:

Cash received by the Company from the production of oil under old agree- ment of sale with the Associated. Oil Co.	165,246.00
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DISBURSEMENTS:

Commission paid to selling agents (Gar- rett & Watson) for negotiation first agreement of sale.....	16,524.60
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Liquidation of outstanding and assumed obligations, including moneys advanced by parties prior to sale of lands, legal outlays, etc., etc.....	92,665.41
Paid to locators direct, and the attendant expense of securing ratifications of power of attorney, etc.....	9,991.30
Salaries to Manager, assistant manager, and secretary and treasurer.....	38,166.60
Incorporation of Pacific Oil Lands Co...	300.00
Field, Office and Operating expenses....	3,680.50
Cash on hand (July 31, 1913).....	3,917.59
	<hr/>
	165,246.00

From what has gone before, it will appear patent to each stockholder of the company, that the agreement of sale of August 1913, with the Associated Oil Co., calling for the payment to the Pacific Oil Lands Co. of \$1,375,000 constitutes the main assets of the company.

As against this as a liability there stands, as of the same date (July 31, 1913), outstanding obligations assumed at the time of the incorporation of the company, an indebtedness of approximately \$150,000.

The company holds as an asset, in addition to the above, 640 acres of land in San Benito County, California, which will; we believe, prove of value once the field in which said land is located is proven up as oil land.

Yes, I have the envelope in which this report, letter and check came and hand the same to you.

(Deposition of Harry B. Thorn.)

(Said envelope, marked [432—326] Plaintiff's Exhibit 36 and made a part of this deposition is as follows:)

Plaintiff's Exhibit No. 36.

(Envelope)

PACIFIC OIL LANDS CO.

748, 749, 750 Mills Building,
San Francisco.

(Circular Stamp)
San Francisco, Cal.

Jan. 8
2 - P. M.
1914

(Address:) Harry B. Thorn,
16 East 33rd St.
N. Y. City

c/o F. A. Burdett

Yes, I read that report several times immediately upon its receipt and was conversant with its contents. The next incident that I recall was, I believe, in March in the same year when my father came to see me and he explained that there had been a little change in the condition of sale or rather that a new agreement of sale had been drawn up in which the company was to receive more cash and the terms of the agreement were to be lower. By company I mean Pacific Oil Lands Company. Mr. Searls, I believe, was handling this as a little—I don't know what you would call it—speculation or high finance of his own. As I stated before, my father said I could still hold my stock and undoubt-

(Deposition of Harry B. Thorn.)

edly there would be similar dividends from time to time, as I had received before, but that the patent had not been granted yet and the Government might or might not grant the patents. Mr. Searls offered to buy the stock from me for \$250, or I could keep it and take my chances on future dividends. I took the \$250. I admit that I am just a little hazy on what he was doing, [433—327] but he got the Associated Oil Company to buy the property outright, instead of paying twenty cents per barrel, which caused a lot of figuring and confusion. The outright price to be paid by the Associated Oil Company for these lands was \$1,325,000; \$75,000 down and \$20,000 a month. Yes, I signed this certificate of stock No. 34 and surrendered it to my father. No, have received no further dividends since. Yes, I knew how many persons were interested as locators in these transactions at that time. There were thirty-two. Presume I knew how many shares of stock each locator had received. Cannot remember how many shares each locator received. As I have said before, I don't remember, now, but I presume I did, because I told my father I was satisfied with my portion. As I recall it, there was some who had done a lot of work, some who had advanced money, and who had received more than I did. Cannot remember who they were. I don't remember whether McMurtry, A. E. Hoeppner or F. E. Harrison were locators; there were thirty-two and I only knew about half a dozen. I presume I knew how many shares of stock McMurtry, Hoepp-

(Deposition of Harry B. Thorn.)

ner and Harrison held in this company before I parted with my stock, as I assured my father I was satisfied with my portion.

Q. At the time you surrendered Certificate No. 31, were you entirely satisfied with all the transactions relating to lands which had up to that time been located by Mr. McMurtry, acting under this power of attorney?

A. In answer to that, I would say that on the back of the first check I received I waived all rights in the company; when I submitted, when I released the stock, I signed a similar statement; I was treated as one of the stockholders and Mr. McMurtry had [434—328] not ceased operations at other times as far as I could see, and I was satisfied.

No, I never repudiated this power of attorney to McMurtry and did not sign it for the purpose of permitting McMurtry to use my name for the purpose of getting oil lands for himself, or for anybody but the locators, and there was never any talk between myself and my father or McMurtry or Hoeppner or Searls or Harrison or anyone upon the subject as to whether Mr. McMurtry or anybody else was to have any interest in any lands located by Mr. McMurtry under my power of attorney, and there was no understanding or agreement express or implied, between myself and McMurtry or any of the other locators, that McMurtry, Hoeppner, Wilson or the Empire Oil & Development Company would have any interest in any of these lands. I don't remember whether or not the letter which I

(Deposition of Harry B. Thorn.)

received in Mexico with this \$250 was a dividend to the locators on account of money obtained on located lands, or whether I learned this on further questioning my father when I saw him. I have the idea now that it was not all the money that I received. This \$250 was a portion of the money realized to be distributed among the locators, but I cannot say that was stated in the letter accompanying the check, but at any rate, I got this impression either in the letter or from my father afterwards. [435—329]

Deposition of Smith H. Freeman, for Plaintiff.

SMITH H. FREEMAN, called April 21, 1917, on behalf of the plaintiff, testified by deposition as follows:

Am a mechanical engineer and reside in Roselle Park, New Jersey. In December, 1907, resided at Bronx, New York, and was of the same occupation. Became acquainted with L. B. McMurtry, F. E. Harrison, Frank H. Searls and C. W. Thorn in about 1905. During 1907 was salesman for mechanical devices for Manning, Maxwell & Moore, at 87 Liberty Street. I had business relations with McMurtry, Searls, Harrison and Thorn prior to 1907. Was a director in the Empire Oil Company and was in their office daily. Acquired stock and became a director in the Empire Company in the early part of 1907. That was my first association in any oil company with McMurtry.

Q. How did you acquire your stock in the Empire

(Deposition of Smith H. Freeman.)

in 1907? A. Labor and attention. Q. And of what did that labor and attention consist? A. Office work. No, was not engaged in soliciting purchasers of stock in this company. My duties in the Empire Company were clerical. Never was engaged in mining. No, am not a mining engineer. Am a mechanical engineer. Searls was in the office every day for an hour about noon time and McMurtry was there attending to his affairs, but what their personal affairs were, I don't know, but it was generally office business.

Q. The records of Kern County, California, disclose that on December 18, 1907, S. H. Freeman, together with a number of other persons, appeared before Samuel C. Worthen, a notary public, in and for the County of New York, State of New York, and executed a power of attorney by which L. B. McMurtry was appointed their [436—330] true agent and lawful attorney. (Substance of Plaintiff's Exhibit 7 stated.) Are you the S. H. Freeman whose name appears on that document (showing witness)? A. Yes, sir. The general talk in the office was that Mr. McMurtry was going west and that he would like to locate some lands and wanted to know if I would take an interest in it. I told him if there was any money in it, and if the subsequent payments to advance that interest were not too great, that I would give him a power of attorney to make locations for me. The condition of affairs of the Empire Company were a little low financially about that time.

(Deposition of Smith H. Freeman.)

Q. Was there much or any stock of the corporation being sold at that time?

Q. Were you familiar with the books of the Empire Company? A. Not from observation, but from general talk in the office. Q. Do you know whether there was any stock of the Empire Company being sold along in October, November or December, 1907? A. I think I remember hearing something about some stock being sold in Canada. This matter had been discussed probably six months before I had actually signed this power. I had some conversations with McMurtry generally. Don't remember that there was any talk about a power of attorney. There was a general talk regarding oil fields in California in the Midway District. The understanding was that he was, when he received those powers of attorney, he was to be the agent for the different parties that gave him the powers of attorney. Think the Empire office broke up there in 1909. Don't remember the date McMurtry left New York, but remember the circumstances very well. Think he left [437—331] a week or ten days before Christmas, 1907. Heard from McMurtry in a general way regarding these transactions during the year 1907. Yes, heard these lands had been located under my power of attorney. Heard at the time what lands they were, but don't now know positively what they were. Know that they were located in Midway. No, do not know the area of lands located under my power.

(Plaintiff's Exhibit 37, the same being the so-

(Deposition of Smith H. Freeman.)

called ratification of this witness dated August 16, 1910, offered in evidence and is as follows:)

(This is similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman.) [438—332]

That is a copy of my signature to Exhibit 37. It was presented to me—C. W. Thorn brought it to me at my office at 170 Broadway. Had only a general conversation about it. Don't remember what it was. I read the paper but know the language only in a general way. (Substance stated to witness.)

Q. Was there any explanation or statement made to you at that time in regard to the contract between Mr. McMurtry and Herrin, dated August 4th, 1910?

A. If I remember correctly, there was a negotiation on out there in California regarding the sale of those lands, and McMurtry was working in our interest. I understood indirectly there were thirty-two locations made by McMurtry under my power of attorney in Kern County, known as the Midway District. Did not know the area. Was not advised in detail as to this contract of August 4, 1910. Don't now remember what I was advised as to that. Talked in a general way with Searls and with Herrin when he was here, in regard to these oil lands, but learned only in a general way the situation and status of the land. No, did not learn how many locations had been made in my name, not to my knowledge. Yes, I received some money in connection with this matter.

(Deposition of Smith H. Freeman.)

Q. Well, I invite your attention, Mr. Freeman, to a check in substance as follows:

“No. 103. New York, September 22, 1910.
Second National Bank of the City of New York.
Pay to the order of S. P. Freeman, Two Hundred and fifty dollars (\$250.) (Signed) F. H. Searls.”

On the back thereof appears the following in typewriting:

“Received from L. B. McMurtry, Two hundred and fifty dollars in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, [439—333] on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 18th day of December, 1907.”

And underneath that typewriting is the signature of “S. H. Freeman.” Is that your signature, Mr. Freeman (showing witness)? A. Yes, sir. Yes, the typewriting was on the back when I signed and I read it. The check was handed me by Searls in his office. He had told me that it was coming from California, as a part payment of my interest in that location. I don’t know where Searls got the money from which this payment was made. I know what I signed there and I gave him a release. I knew thoroughly at the time what I was doing. Don’t remember that there was any explanation made by Searls as to why he wanted me to sign this release. Yes, after signing this check I was given stock in an

(Deposition of Smith H. Freeman.)

oil company—the Pacific Oil Lands Company. Don't remember just when Searls gave it to me personally at his office. Presume this certificate of stock No. 22 for 1000 shares is the one I received. That is my signature on it and also on the receipt on the stub dated September 13, 1911. When Searls handed me the certificate he made merely an ordinary remark in saying not to dispose of that or hypothecate it in any way, that it was worth considerable more than the face value of it. Don't recall that he told me anything about the Pacific Oil Lands Company; not that I remember particularly. I knew in a general way that the company had been formed and that McMurtry was president. Received this information pretty close to the time I received the certificate. Did not, at the time I received the certificate, know fully as to the resources and assets of the company. Don't remember that Searls told me why he was giving me this certificate. [440—334] The only thing I knew as to the stockholders at that time was that they were only those I had been associated with, Thorn, Searls, Harrison, Harder and others whose names I don't recall, known as the Jack Thickers crowd; I don't know their names today." Don't know how many shares the others received. Yes, I understood that Hoeppner and McMurtry were stockholders. Don't know how many shares they had.

(Witness' attention invited to Plaintiff's Exhibit 38, dated August 21, 1913.)

Yes, I executed that paper at Newburgh, Orange

(Deposition of Smith H. Freeman.)

County, New York. Thorn brought it to me personally. There was only a general conversation at the time. He told me that McMurtry wanted this proxy to vote my stock. No, I did not know fully at that time the resources or assets of the Pacific Oil Lands Company. After signing this proxy I sent it to McMurtry in California.

(Plaintiff's Exhibit 38 read into evidence as follows:)

(This is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman.) [441—335]

(Plaintiff's Exhibit 39, the same being dated December 11, 1913, shown witness.)

Yes, I signed Exhibit 39. It came to me by mail with a letter.

(Plaintiff's Exhibit 39 read into record as follows:)

(This is a consent to dividend similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman.) [442—336]

(Letter produced by witness and marked Plaintiff's Exhibit 40 offered and read in evidence as follows:)

Plaintiff's Exhibit No. 40.

(Letter-head)

"PACIFIC OIL LANDS CO.

"August 4, 1913.

"You are hereby notified that the regular (ink) annual meeting of the stockholders of the PACIFIC

(Deposition of Smith H. Freeman.)

OIL LANDS COMPANY will be held at the principal office of the Company, 749 Mills Building, in the city and county of San Francisco, State of California, on Monday, the 18th day of August, 1913, at 10 o'clock A. M., for the purpose of electing a Board of Directors for the ensuing year and the transaction of such other business as may come before the meeting.

“F. E. HARRISON,
“Secretary.

“Mr. S. H. Freeman,
“87 Liberty St.,
“New York City.”

I have not the remotest idea what I did with Exhibit 39 after executing it. Yes, I believe I received money from the Pacific Oil Lands Company after that.

Q. I invite your attention, to a check, in substance, as follows:

“San Francisco, 1/8/14. No. 1188. Bank of California, National Association, San Francisco. Pay to the order of S. H. Freeman, Twenty Dollars. Pacific Oil Lands Co., F. E. Harrison, Secy-Treas., L. B. McMurtry, Vice-Pres.”

Endorsed on the back of that check is the following:

“Pay to the order of Lucy S. Freeman. S. H. Freeman. Lucy S. Freeman.” [443—337]

Is that the check you just referred to, or the money you have just referred to? A. Yes, sir, I received that twenty dollars. How did you receive it? A. By letter.

(Deposition of Smith H. Freeman.)

(Letter produced by witness marked Plaintiff's Exhibit 41, offered and read in evidence as follows:)

Plaintiff's Exhibit No. 41.

(Letter-head)

"PACIFIC OIL LANDS CO.

"January 8, 1914.

"Dear Sir:

"Inclosed you will find dividend check for \$20.00, the same representing your *pro rata* of the first distribution to the stockholders of the company of cash assets amounting to \$20,000, and to which distribution we hold your written consent.

"Accompanying this letter you will also find a statement covering the affairs of the company. This also, we feel sure, will prove of great interest to every stockholder.

"Wishing you a very happy and prosperous 1914, we beg to remain,

"Very truly yours,

"PACIFIC OIL LANDS COMPANY,

By F. E. HARRISON,

Secretary."

Yes, with that letter was the report to the stockholders. (Witness produces same, it being similar to Plaintiff's Exhibit No. 35.)

I surrendered this certificate of stock No. 22 to F. H. Searls. He gave me \$250 for it. Don't recall the conversation, only in a general way. Don't think he said why he wanted it. He sent me word to meet him at the Knickerbocker Hotel. [444—338]

(Deposition of Smith H. Freeman.)

Q. This date (on the assignment of the certificate of stock) apparently, is March 27th, 1912, and it appears that as late as January 8, 1914, you were still drawing dividends from the Pacific Oil Lands Company. Can you explain why it was that you surrendered your stock on March 27th, 1912, to Mr. Searls, and afterwards drew dividends from the company? A. I have no idea why it was so. Never received any money after the receipt of this \$20 on or about January 8, 1914. No, am not a stockholder in the Pacific Oil Lands Company. Not since I surrendered certificate No. 22. No, at the time I surrendered this certificate I did not know who else were stockholders in the company, not to my knowledge, nor did I know fully what the resources and assets of the company were. I knew that the lands which had been located by McMurtry in my name had been sold and knew of these contracts with the Associated Oil Company, but did not know specifically what had been done, but I knew Mr. McMurtry was very much indebted from the moneys received, and he had paid some of those debts. No, did not know whether or not these contracts with Herrin and the Associated Oil Company had been assigned over to the Pacific Oil Lands Company.

Q. You spoke about Mr. McMurtry having paid off his debts. What debts were those? A. Well, that was all a personal matter at that time between Mr. McMurtry and myself. Q. Was that a personal debt owing to you? A. No, sir. Q. Who was

(Deposition of Smith H. Freeman.)

Mr. McMurtry owing, if you know? A. Well, I understood he was owing Mr. Stratton. Q. Mr. H. C. Stratton? A. Yes, sir. Q. Do you know what that was for? A. For obligations at the works largely.

Yes, I was in San Francisco last fall. Went in response [445—339] to a telegram from Mr. Helm and was there five weeks. No, did not testify while there. Yes, had conversations with various attorneys engaged in this litigation. No one suggested that I ought to sue Mr. McMurtry.

Cross-examination.

Yes, when I received this stock in the Pacific Oil Lands Company I understood from Mr. Searls that the stock was being distributed among my colocators and myself on these California lands. I recall that I received the first \$250 in September, 1912. Don't remember when I signed this ratification or when I received this \$20 dividend check without referring to memoranda. My recollection is that I disposed of this stock to Mr. Searls in 1914. This \$250 I received from the stock was in the form of a check which I endorsed and Searls gave me the money there in his office. Yes, that was shortly after I signed the ratification.

Q. Now, can you tell me what you did with that money, where you deposited it, I mean whether you deposited it or not; I am only trying to get the date of that sale, because there is a mistake on the date on the back of that certificate; I think it should have been 1914 instead of 1912, and I want to find out when you deposited that \$250 check, if you did,

(Deposition of Smith H. Freeman.)

which would give you the date of 1914, instead of 1912?

Mr. HALL.—I think that your theory is right about it.

Q. Not only that, but you signed the consent to the dividend in 1913, and the proxy in 1913? A. Yes, sir. Q. Can you ascertain from your bank account whether you deposited that money in March, 1914? A. That was paid to me in cash and I put the cash in my pocket; I didn't deposit it. [446—340] Yes, I will look at my bank account and see when I deposited this \$250.

Q. I think it will straighten this out. Now, can you state the thing this way: That when you signed the proxy to vote the stock at a meeting to be held in San Francisco, and when you signed the consent to the dividend of \$20,000, to be declared, and when you got the \$20.00 dividend, that you were still a stockholder in that company? A. Why, yes. Don't remember where I got the knowledge that McMurry for these locators was owing Mr. Stratton some money.

Q. Don't you now know in a general way that you received information that the title to these lands were involved, and the Government was claiming some interest by reason of withdrawal or something of that kind? A. Indirectly, yes, sir. Q. Is it not true when you disposed of this stock to Mr. Searls that he told you that there was a question about the title to the lands and that you could either take that \$250 cash or take your chances on it? A. Yes,

(Deposition of Smith H. Freeman.)

sir, I remember that very well. Q. And is it not equally true that you did know and you were told by Mr. Searls that the contracts that you were ratifying in that ratification had been transferred to this corporation by Mr. McMurtry in order to better handle the thing, and that if the Government took these lands away, there would be no payments at all under that contract; is that true? A. Yes, sir. Q. I am simply asking you the question to refresh your memory, so that you can see that you were advised by the report itself and by Searls before that, at the time you got the stock, that these contracts which you ratified a short time before, had been transferred to that company; don't you remember that? A. Certainly I do. At that time I only knew of the mining laws in a [447—341] general way. No, I did not at any time make any contract or agreement with McMurtry that he could use my name to get more land than he was entitled to under the law, and it was not my intention that anybody should have any interest in the lands that were located in my name or that the Government would be defrauded of any of its public domain, or that this power of attorney should be used to violate the laws of the United States. Yes, I understood when I read this certificate dated August 16, 1910, that McMurtry had recorded the power of attorney I had given him in Kern County, California, and that I was ratifying it, and that McMurtry had made contracts under the power of attorney as my agent in fact, with Herrin and others, dated

(Deposition of Smith H. Freeman.)

August 4, concerning the property located under the power of attorney, and that I was ratifying the same. I executed that ratification believing that I was a *bona fide* locator, and that the location had been made for myself and not for the benefit of McMurtry or anyone else. No, I did not pay anybody any money for this Pacific Oil Lands Company stock and it was not a present. It was delivered to me to cover my interest in the lands located, Yes, when I signed the endorsement on the check for \$250, which Searls cashed for me, I was advised that the \$250 was being distributed to each locator out of the funds that were authorized by Mr. McMurtry through sale of some of the located lands, or contracts with Herrin and others, and that they wanted me to endorse that in order that in the future that he could handle the properties to better advantage and that I was not giving up my entire interest in those located lands. Yes, I knew I still had an interest in the lands. [448—342]

Redirect Examination.

Q. If you had known prior to the time and at the time you executed this power of attorney that it would be used for the purpose of acquiring more public domain than one person is by law allowed to acquire, would you have signed any such?

A. I don't think that I would, giving them more land than was allotted, as I get the question, to an individual. [449—343]

Deposition of Frank D. Taylor, for Plaintiff.

FRANK D. TAYLOR, called April 23, 1917, on behalf of the plaintiff, testified by deposition as follows:

Am a publisher and printer at No. 1 Montgomery Street, Jersey City, N. J. Reside at 537 West 149th Street, New York. Lived in California from 1888 to 1902, at Los Angeles, Alameda, Oakland and San Francisco. During the latter part of this time I was engaged in the fire insurance business. Was never engaged in mining or any other enterprise or a stockholder in any mining or oil business, nor did I ever locate any public lands under the mining laws, and am not familiar with the public mining laws. Only in a general way; I knew land could be taken up by location, etc. Was with the Underwood Typewriter Company when I first came to New York. Yes, I knew Edwin L. Powell in New York City since 1902. He was my most intimate friend in the east. Boarded at his house about two years. Never had any business dealings with him,

Q. The records of Kern County, California, disclose, Mr. Taylor, that there is recorded therein a power of attorney (substance of Plaintiff's Exhibit No. 7 stated). Are you the Frank D. Taylor whose name appears upon that instrument (showing witness)? A. I am. I signed this through the solicitation of Mr. Powell. Think he first mentioned it in November, 1907. He told me that Mr. McMurtry was going to California, and wished to go out there before the 1st of January, and he wished to secure

(Deposition of Frank D. Taylor.)

locators—it had something—in order to explain that right, Mr. Hall, I must say something about the old Empire Oil & Development Company, because one was dovetailed into the other. Yes, I knew in a general way that the Empire Company was in difficulties and had been trying to sell stock for quite a time. Had known [450—344] McMurtry since the spring of 1907. Had been in the office a good many times and talked over the general situation out there in California with him. Never met Searls. Met Harrison and Thorn there in the office prior to the execution of this power of attorney. Mr. Powell had been selling stock for the Empire Company, and after the company started they had to quit, and everybody was in financial straits, as I understood it, in the Empire, and Mr. McMurtry was going out to make these locations and Mr. Powell came to me as a friend of his, and told me that there was an opportunity there to make something, some money; that Mr. McMurtry was very familiar, as he expressed it, with the oil district there in California, and if the land was located and did develop anything, we would make a lot of money. Do not recall that any particular county or area in California was mentioned. No, they talked about the Kern River District, and in private talks McMurtry mentioned the San Benito field. I executed this power at the office of the Empire Company, No. 299 Broadway. Went there with Powell at his invitation. Don't remember any one being there except McMurtry, Powell and myself. Yes, I

(Deposition of Frank D. Taylor.)

believe I heard about this power from Powell during the year 1908, but nothing definite. Was in Boston that year until July with Powell. The only thing I learned concerning McMurtry's action during 1908 was that there had been no progress made; there was nothing definite one way or the other. Cannot say exactly when I first had information about any progress. Powell and I corresponded after that and I saw him at intervals and undoubtedly received information from him in general conversations, but the best of my recollection is there was nothing definite in any way until I saw Mr. McMurtry in 1910. Don't remember that at the time I signed [451—345] this power there was any understanding on my part as to the number of claims which were to be located in my name. The first definite information I received as to what McMurtry had done under this power I think was in 1910 from McMurtry. I made an appointment by telephone some time in August and met him at night in the St. James Building in New York City. He had either written me or left word for me and I called him up. That was when Mr. McMurtry brought the ratification of the power of attorney to be signed. At that time the gist of the conversation was that they had deals in California which they were negotiating, and that this ratification was necessary; I think it was required by the laws of the State of California, if I remember rightly, and also to satisfy the other parties to the deal. No, I was not advised as to the area of lands involved or

(Deposition of Frank D. Taylor.)

the number of locations made in my name. No, he told me nothing about that. No, I made no direct inquiries on the subject. We had a general talk; I was with him, I guess, twenty minutes or a half hour. Yes, I signed the ratification. (Plaintiff's Exhibit No. 42, the same being a photographic copy of the ratification of the power of attorney executed by Frank D. Taylor, and others on August 24, 1910, shown witness.) Yes, I then signed that before a notary. By appointment made that evening I next saw McMurtry at the Knickerbocker Hotel the following day. I then endorsed a check for \$250.

Q. I invite your attention to check No. 101, in substance, as follows:

No. 101. New York, August 25th, 1910.
Second National Bank of the City of New
York. Pay to the order of Frank D. Taylor,
Two hundred and fifty dollars. (Signed) F. H.
Searls. [452—346]

On the back thereof is the following in typewriting:

“Received from L. B. McMurtry, \$250 in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 18th day of December, 1907.”

Now, just below that typewriting that I have read to you on the back of that check is the signature “Frank D. Taylor.” Is that your signature (show-

(Deposition of Frank D. Taylor.)

ing witness)? A. It is. That is the check I referred to. McMurtry cashed this check for me. Yes, the typewriting was on the back when I endorsed it and read it. Mr. McMurtry told me the night before that the locators would receive \$250 each; that they had made some money out there, part of which had been spent in development work, and, as I understood it, this amount of money was left over, what was necessary, and they were making this distribution of the money to the locators. He told me that the night before, when I signed the ratification.

(Plaintiff's Exhibit No. 42 offered in evidence and is as follows:)

(This is a ratification similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman and purports to have been executed by Frank D. Taylor, August 24, 1910.) [453—347]

Yes, I read the ratification before signing. No, this contract with Herrin et al., dated August 4, 1910, was not specifically referred to in the conversation with McMurtry. The contracts were referred to as indefinitely. They had not been consummated, as I understood it, and this ratification was necessary to effect the consummation of those contracts of August 4th, nor had I received any information as to the extent or area of the lands affected by the contract or how many locations that had been made in my name were affected by the contract. No, I made no inquiry on the subject. When I endorsed the check next day no specific

(Deposition of Frank D. Taylor.)

advice was given me in regard to the lands or the contract of August 4th. When I signed the check Mr. McMurtry told me that this typewritten matter on the back, as far as that was concerned it was a mere matter of form. You see, Mr. Hall, we trusted absolutely in the integrity of Mr. McMurtry all the way through, the same as you would your own brother. We left it all to him. Don't remember whether I asked about the writing on the back of the check, but he told me about it. The next thing definite that I heard about these transactions was in the following year, 1911. May have heard something through Powell in the meantime, but nothing definite. The next definite transaction was in 1911. Mr. Thorn delivered me a thousand shares of stock in the Pacific Oil Lands Company. Don't know Thorn's initials. It was the old gentleman with white whiskers.

(Certificate No. 18, for 1,000 shares, of the Pacific Oil Lands Company, exhibited.)

Yes, that is my signature on the back of that certificate. It is the one Thorn handed me. The receipt dated September 13, 1911, on the stub of this certificate No. 18 bears my signature. The only thing that impressed itself upon my memory of the [454—348] conversation at the time this stock was delivered to me by Thorn was not to sell that certificate, but to hold the certificate, as he said it would probably prove of great value. No, I received no information at that time except I suppose there was nothing that had been said to me about it before at

(Deposition of Frank D. Taylor.)

any time. Yes, that the first time that I knew such a corporation as the Pacific Oil Lands Company existed. I assumed that I was entitled to it, but he didn't say anything as to that. I remember Mr. Thorn saying—this is to the best of my recollection—that this company was formed to facilitate the business out there for the handling of our affairs. This information came to me at the time I received the certificate. Up to that time I knew nothing about it. No, I did not then know how many locations had been made under my power, or the extent or area of land on which my name had been used as a locator, or what disposition had been made of any lands so located, or what the assets or resources of the Pacific Oil Lands Company were. I assume that Mr. Thorn told me all he knew about it, at the time he delivered this stock. Don't remember that he told me anything about the assets or resources of the company. Did not then know that this contract of August 4, 1910, with Herrin and others had been made or any contracts supplemental to that of August 4, 1910. The notion we had was all very indefinite. These deals were supposed to be in process of negotiation, but nothing had been accomplished. When I received this \$250, in August, 1910, I did not know specifically from what sources the funds had been derived nor had I received any advice as to this at the time I received certificate No. 18. I assumed that the money with which they paid \$250 to each of the locators, we were told by Mr. McMurtry [455—349] was some

(Deposition of Frank D. Taylor.)

money they had made out there, but whether through sales of lands or how they did it, I did not know; there was nothing definite said about it. No, at the time I received the certificate I did not know who the stockholders in the company were. No, I have never seen Major E. A. Hoepfner, nor did I, at the time I received this stock, know how many shares of the stock he held or how many McMurtry held. I knew nothing about it until I heard it in San Francisco, last fall in the courtroom, during the trial in Judge Bean's court. At the time I received this stock the only specific person I knew who held stock in this company was Powell. No, I did not know how many shares he had, but I know—I say I know—my impression is that he had more than I did; I don't know how many though; I may be wrong about it; they might be shares of stock he had in the old Empire. No, prior to obtaining this information in the courtroom in San Francisco, I never inquired as to who the stockholders in this company were. I supposed, of course, that all the locators were stockholders. I have no information as to what McMurtry's or Hoepfner's holdings in the company were. All the information I had I depended upon getting from Mr. Powell. He was in touch with McMurtry, and I got no such information from Powell. The next definite step taken in this matter was in the winter of 1913—1914. Don't remember signing any paper in the summer of 1913. I remember a dividend of \$20 that was

(Deposition of Frank D. Taylor.)

paid and some consent was signed, but I think that was later in the year.

(Plaintiff's Exhibit No. 43, the same being the proxy dated August 20, 1913, shown witness.)

Exhibit No. 43 bears my signature, but I do not recall where I signed that thing; that was in August. I don't remember that, [456—350] but that is my signature, and I undoubtedly signed it. Do not recall who presented that to me. I didn't see anyone connected with the company except Mr. Thorn; I know that. I have no letters from the Pacific Oil Lands Company. I don't recall ever receiving but one, and I am positive as to that; that was a consent and a check for \$20.00, I believe. Don't recall having received a notice of stockholders' meeting of this company.

(Plaintiff's Exhibit No. 43 read in evidence and is as follows:)

(This is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman and purports to have been executed by Frank D. Taylor, August 20, 1913.) [457—351]

(Plaintiff's Exhibit 44, same being the so-called consent to distribution of dividends, shown witness.)

That is the consent I referred to a moment ago as having been received through the mails. There may have been a letter accompanying it requesting me to sign it, but I have not such letter and don't know that I got any. Think I mailed this Exhibit No. 44 to San Francisco after signing, to McMurtry; or they may have enclosed an addressed envelope; I

(Deposition of Frank D. Taylor.)

think he was in the Mills Building then. I read it before signing. I don't recall definitely knowing from what source this proposed dividend was derived. It was some money on hand, but whether it was from capital or profits, I do not remember now; they did pay me \$20.00, though.

Q. I invite your attention now to a letter on the letter-head of the Pacific Oil Lands Company, which has already been marked Government's Exhibit No. 32; it is a letter dated December 3d, 1913, signed "Very respectfully yours, Pacific Oil Lands Company, by F. E. Harrison, Secretary"; will you please read that (showing witness)? A. Yes, I think I received one of these.

Yes, I am reasonably certain that I received a copy of this letter of December 3d, 1913, at the time the consent was sent me.

(Plaintiff's Exhibit No. 40, the same being dated August 4, 1913, shown witness.)

No, I don't remember of receiving a similar letter and reading the same does not refresh my memory as to the execution of the proxy in August, 1913. I cannot remember anything about that proxy. After I signed this consent, Plaintiff's Exhibit No. 44, I received \$20.00. [458—352]

Q. I hand you a check which is in substance as follows:

"No. 1184. San Francisco, 1/8/14. The Bank of California, National Association, San Francisco. Pay to the order of Frank D. Taylor, \$20.00. Pacific Oil Lands Co., F. E.

(Deposition of Frank D. Taylor.)

Harrison, Secy-Treas. L. B. McMurtry, Vice-Pres.

Endorsed on the back thereof is the name of "Frank D. Taylor." Is that the check for the dividend you just referred to? A. Yes, sir, it is, it must be; it is the only one for \$20.00 that I had. That is my signature on the back of this check. Think I received this check through the mails and may have received a letter with it, but have not it.

(Plaintiff's Exhibit No. 41, dated January 8, 1914, shown witness.)

I don't remember receiving that letter. I don't think I ever received that, not in that form; owing to the fact that it mentions a statement, I know I never had any statement of the affairs of the company of any kind. If there was a letter with this \$20.00 check, it was nothing more than one saying that the check was enclosed or something to that effect.

Q. I invite your attention to a paper marked Government's Exhibit No. 35, entitled, "Pacific Oil Lands Company, First Report to Stockholders," and I will ask you to examine those three sheets of paper carefully, Mr. Taylor (showing witness).

Mr. ACH.—Ask him whether he had received that before.

The WITNESS.—I never had any report at all. This is the first one I looked at in San Francisco.

Q. Did you ever see a copy of this report before?

A. No, I do not recall ever seeing it. Q. Was it exhibited to you [459—353] in San Francisco? A. I

(Deposition of Frank D. Taylor.)

don't remember its being exhibited to me, but it was mentioned on the stand there. Q. I want to get just your best recollection about the situation: do you say that you did not receive such a report or that you now do not remember having received it? A. I never received any report of any kind. The next transaction occurred in March, 11. That was when Mr. Thorn took up the 1,000 shares of stock. Mr. Thorn came into the office to see me in reference to the stock and told me the general condition of the company was very bad; that they had been unable to accomplish whatever they were trying to do, and gave me to understand the affairs were very black, and that they were paying \$250, a distribution of \$250 for the stock, the outstanding stock, so I assumed from what he told me that that was what was left out of the wreck; and he also said that the affairs were not yet wound up and held out rather vague hope that there might be something later on.

I surrendered this certificate No. 18 the following day and received \$250. The only conversation at that time was along the same general line. That is my signature on the back of certificate No. 18. It was endorsed in blank. The name Walter S. Brann has been filled in since. I was not at that time informed as to who was to be the transferee. Nothing was said about that by Thorn. I understood they were going to wind up the affairs of the corporation. I understood that all of the stock was being taken up. No, I was not advised as to the assets or resources of the company at the time I surrendered

(Deposition of Frank D. Taylor.)

this certificate 18. I didn't think they had any assets to speak of at that time; after the conversation with Mr. Thorn I was surprised to get \$250, I was surprised to get anything. [460—354] No, I did not then know how many locations had been made in my name or the area or what contracts had been made affecting such lands. I did not know that this contract of August 4, 1910, or any supplemental or amend contracts based thereon had ever been consummated. Yes, I think I then knew what the capital stock of the company was, but not who the stockholders were. I had been told that Mr. Powell had stock; I knew all the locators had stock in the company. No, I did not know Hoeppner or McMurtry were stockholders. No, I made no inquiry as to who were stockholders or the number of shares each held. No, after surrendering this certificate No. 18, I received no further moneys on account of those locations nor had anything more to do with the Pacific Oil Lands Company as a stockholder. No, prior to surrendering this certificate I made no inquiry of Thorn or any other person with regard to the consummation of these contracts mentioned in the ratification which I signed in August, 1910. I made no inquiries whatever. If anything had come up of importance Mr. Powell would have let me know. Yes, I am the Frank D. Taylor who is a party plaintiff in the action of Frank D. Taylor and others against L. B. McMurtry and A. E. Hoeppner, which is now pending in the United States District Court for the Northern Division of

(Deposition of Frank D. Taylor.)

California. Yes, I was in San Francisco last November and December and testified there in Judge Bean's court, but don't know that it was in suit A-38, United States vs. Thirty-two Oil Company and others. Don't know the name of the suit.

(Plaintiff's Exhibit No. 44, the same being consent to the distribution of dividends by the Pacific Oil Lands Company, dated December 13, 1913, offered and read in evidence:)

(This is a consent to dividend similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman and purports to have been signed by Frank D. Taylor Dec. 13, 1913.) [461—355]

Cross-examination.

Yes, when Thorn came to me to get me to give up my stock in the Pacific Oil Lands Company he painted things very black. Yes, sir, I understood it was a wreck. He told me that they had not succeeded in making contracts. I don't know whether he used that word or not—the deals he was trying to consummate, and I believe he said he was threatened with litigation. I don't remember his mentioning anything about the lands having been withdrawn by the Government or the Government undertaking to institute proceedings in court to recover withdrawn lands. He did not go into details, and I don't remember any specific statement. I don't know whether he told me it (the stock) was being retired or not. I understood that it was all being retired, and that they were going to wind up the affairs of the company. I have only a general im-

(Deposition of Frank D. Taylor.)

pression that I received from his conversation. I assumed that the litigation he spoke of would be in reference to the title to the lands. I knew that there was threatened litigation, but Thorn did not specifically mention the Government, but my understanding was that it was with the Government. Don't think I had ever talked with Powell about this possible litigation. Had not heard of it up to that time. At the time I signed this ratification for McMurtry, I don't remember of his going into details, but he told me it was necessary to sign the ratification to satisfy the other parties to the other contract; that is one of the things he told me was necessary. No, he did not tell me how I was to be paid for the lands or that I was to be paid out of the oil these people were to drill for on the lands. I assumed this, because I knew they were oil lands. I understood that this [462—356] \$250 he paid me was money that was left over, that they made out there, through some deal; whether it was from leases or what, what it was, I did not know. No, to the best of my knowledge I have not revoked or tried to modify this power of attorney given McMurtry. No, at the time I talked with Powell about signing this power of attorney, no suggestion was made to me by Powell that he wanted me to let McMurtry use my name nor that McMurtry could get lands out in California that he could not otherwise get for himself. I expected Mr. McMurtry would be reimbursed for what he did out there; I did not expect him to do it for nothing. No, nothing what-

(Deposition of Frank D. Taylor.)

ever was said by anybody as to any interest he might have in the lands that might be located. No, there was no understanding or agreement between Powell and myself or anybody else that McMurtry was to have any interest in any lands that might be located in my name either before or after signing the power of attorney. We all understood that McMurtry was in some way to finance the development of these lands. Whether he would do it, whether through the lands or not, I don't know, but we figured that he would have something tangible to work on if he was able to make locations. I understood from Mr. Powell that I incurred no financial obligation. I think Mr. McMurtry had the power of attorney to raise money to finance the working of the land. Yes, at the time of executing the power of attorney my attention was drawn to the fact that McMurtry was given the right to contract concerning the sale of and otherwise as to the lands located for me, and to mortgage them, I understood from Powell that there was development work to be done. Yes, at the time Thorn gave me this stock I understood that all the locators were treated alike in the delivery of stock. Yes, Thorn told me [463—357] this: that the company was organized solely for the purpose of better handling the interests of the locators. No, I certainly had no intention when I executed that power that it should be used for the purpose or defrauding the Government or in aiding McMurtry or any person, firm or corporation in defrauding the Gov-

(Deposition of Frank D. Taylor.)

ernment out of this land. I did it to benefit myself. No, I would not have signed the power if I had known McMurtry at any time would use it for the purpose of attempting to cheat or defraud the Government. Yes, I believe that McMurtry came to me in August, 1910, for this ratification or said something on the subject of making a report or an account to me and the other locators when anything definite was accomplished. I believe he did. I would not say positively; but I know we were always waiting and supposed to get a report, but it was never received. Yes, it was my understanding and intention from the start that each of the locators would be the full and complete owner of an undivided interest in whatever locations might be made, and that after something had been accomplished, the matter had been disposed of, or money had been realized, that a report would be made and an account had and then an agreement would be arrived at as to how much McMurtry would be paid for his services. That was my understanding. As to what Mr. McMurtry would be paid for his services, that was left to the future. I expected the locators and Mr. McMurtry and all those interested to get together if anything was accomplished out there worth while.

Redirect Examination.

I cannot say from just what source I received this understanding. That was my general understanding. Mr. Powell and myself had talked the

(Deposition of Frank D. Taylor.)

matter over in a general way and [464—358] numerous times. The whole thing was left to Mr. McMurtry entirely. Mr. Powell had the greatest confidence in him and so did I, but, of course, I didn't know Mr. McMurtry as intimately as Mr. Powell did. There were no details worked out at the time I signed this power of attorney. I didn't say there was any details worked out. I understood from the beginning that McMurtry would be reimbursed finally if the lands proved profitable, but, as to what his reimbursement would be nothing was ever said. I might have absorbed that understanding from Mr. Powell and others when the matter was talked over, but as to what understanding it was, nothing was ever said definitely. Yes, he was to be reimbursed from the profits made from the lands. The locators—I anticipate that is the only way I can put that—in case oil was discovered on the lands, and they proved of value, all the locators would get together with Mr. McMurtry and some definite agreement would be made at that time for his reimbursement. If he had been successful, I don't think there would have been any trouble in coming to an understanding. I did not understand that Mr. McMurtry had anything to expend personally in developing the oil lands; any money that he got hold of for development work would be raised on the lands that he located.

Q. Who was to bear the expense of bringing these lands to a point where they could be realized on, so that future development work could take place?

(Deposition of Frank D. Taylor.)

A. The locators. No, I was never called upon to advance anything for development. As to how McMurtry was to be reimbursed if the lands turned out unprofitable and no advancement on them could be procured, that was left to the future; there was nothing definite said about it. No, I did not expect to reimburse him [465—359] personally out of my pocket. I did not expect to advance any money, although if the prospects had been good and I had been called on for a small sum, I would have done so.

Recross-examination.

Q. You used the word "reimbursement." Did you intend by the use of the word "reimbursement" to mean compensation? A. To pay for his services. [466—360]

Deposition of William A. Mahr, for Plaintiff.

WILLIAM A. MAHR, called April 23, 1917, by the plaintiff, testified by deposition as follows:

Am a traveling salesman and reside at 307 Avenue C, Brooklyn, New York. Have lived in the vicinity of New York City forty years. Never lived in California. Was first there in November or December, 1916. In December, 1907, I resided in New York City and was a salesman employed by Nixon and Thickers, in the Knickerbocker Building. Had then met L. B. McMurtry. John B. Thickers introduced me to him. Had never owned and stock in the Empire Oil & Development Company or in any corporation in which McMurtry was interested.

(Deposition of William A. Mahr.)

At that time my duties took me where the clothing trade was, in different streets around Broadway, Fourth Avenue, University Place, etc., and was in the office of Nixon and Thickers every day. They dealt in wholesale woollens. I was not familiar in detail with the public land laws. I knew there were such lands that could be located, and in a general way knew that there were laws governing such locations.

Q. The records of Kern County, California, disclose that on December 19, 1907, William Mahn, or William Mahr, and a number of other people, appeared before George F. Handel, a commissioner of deeds of the City of New York, and executed a power of attorney. (Substance of Plaintiff's Exhibit No. 4 stated.) Are you the person who executed that document in the name of William Mahr, or William Mahn? A. I see the "M-a-h" and then my "r" when down there and they took it for granted the letter was an "n." Q. Since the execution of that instrument, has that difference arisen from time to time in the execution of documents?

A. It did on many of the documents, yes; in fact, I signed my name just identically in several [467—361] instances just the way I signed it at that time. Q. There is no question in your mind about you being the person who executed that instrument? A. Absolutely not. I signed that at the office in the presence of Thickers. No one else was present. Yes, I knew Mr. Handel. He was then an attorney for James, Schell & Elkus and his office was

(Deposition of William A. Mahr.)

down on Broadway, at least twenty blocks from our office. Don't remember that Handel was present when I signed that power of attorney nor do I recall going to Handel's office after signing it. Would not say whether he was or was not present. Have no way of telling.

Q. Who, besides Mr. Thickens, called on you personally, or was present when you executed the instrument? A. There was not anyone—of course it was taken—that power of attorney was taken in the office when everybody was in the office, don't you know, but at the particular time I signed there was nobody, that I remember, that was right around me who could see me sign it or hear the conversation.

Q. Do you remember whether or not anyone took your formal acknowledgment to it? A. That I cannot say.

Mr. Thickens asked me to sign the power of attorney, giving Mr. McMurtry power to locate lands for me, oil lands, in California. We had been talking about it day in and day out long before I ever signed it. No, I had never seen the document before I signed it. I believe I was then at my desk.

Q. And what was said at the particular time when the document was presented for your execution? A. Sign this power of attorney to locate lands for you in California.

No, I did not read it. Don't remember reading any portion of it. Never had talked to McMurtry about it. No did not [468—362] at that time know C. W. Thorn. I know all the boys in the

(Deposition of William A. Mahr.)

office that signed it, and think their names were on it when presented to me for signature. Yes, I knew Herbert M. Walker. He was employed in the office there, as was F. H. Romaine, Jr., W. A. Keenan, C. Rupert Walker, Eugene Metz, H. E. Bashore, Walter Wilson, and J. E. Farrell. Did not know R. B. Welch. Cannot say that I saw any of these others sign. Did not see McMurtry after I signed this, nor did I hear anything about any acts that had been done by him under it during the year 1908. The first I heard of anything having been done by McMurtry under this power was in 1910. McMurtry then came to the office. Don't remember having discussed with anyone this power between the date of signing and the date McMurtry came to the office in 1910, nor did I make any inquiries during that time with respect to what McMurtry had done under it. It was in August, 1910, that McMurtry came to the office. He wanted to get my ratification of the power of attorney and said it was necessary for him to dispose of part of the lands in order to carry on the work of the balance and in order to do that he would have to get my ratification to show that I was still alive, and that he, that I was a real live locator, as he put it, and that he was still my agent. I would not sign the ratification at first. There were four of us there in the office: Herbert M. Walker, Metz, Wilson and myself. Mr. Nixon, our boss, advised us to consult an attorney to see that the ratification was all right, and that the word "lawful" was inserted in my

(Deposition of William A. Mahr.)

ratification and in the other three, and I signed mine. Yes, I signed on advice of counsel I consulted, a man named Worthen, down with Elkus. Yes, in the same office with Handel. Yes, I advised Worthen about these matters and he saw the ratification. (Plaintiff's Exhibit [469—363] No. 45 read into the deposition. It is a ratification similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman except for the insertion of "lawful" as the 15th word from the end, and purported to have been executed by William A. Mahr, August —, 1910.)

(Plaintiff's Exhibit [470—364] No. 45, the same being a photographic copy, shown witness.)

Yes, that is a copy of my signature and I read the ratification before signing. No, I received no information from McMurtry or any other person as to the contents or purpose of that contract of August 4, 1910, other than what is stated in the ratification, nor did I make inquiry of McMurtry concerning it or know how many tracts of land had been located by McMurtry under my power, or make any inquiry as to that. No, I did not know the state of development of any lands that had been located in my name or make any inquiry upon that subject. Mr. Worthen and these other three whose names I have mentioned were present when I signed the ratification. I don't know Worthen's initials. I was introduced to him that day in our office. Did not receive anything of value at that time. Yes, I did afterwards, about a month later

(Deposition of William A. Mahr.)

from Mr. Searls. No, I did not know Searls at that time.

Q. I invite your attention now to a check in substance as follows:

“No. 114. New York, September 26, 1910.
Second National Bank of the City of New
York. Pay to the order of William Mahr, Two
hundred and fifty dollars. (Signed) F. H.
Searls.”

On the back thereof is the following in typewriting:

“Received from L. B. McMurtry, \$250.00 in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907.”

And signed just below that typewriting which I have just read to you is the name, “William Mahr.” Is that your signature on [471—365] the back of that check (showing witness)? A. Yes, sir. About a month after signing this ratification Searls brought me that check. Don't remember that the typewriting was on the back of the check when I signed it, or whether I read it. Reading this typewriting on the back of the check I have no recollection of its being there when I signed it. When he presented the check Searls said I have got \$250 that McMurtry promised you, and if you will endorse that check, why, I will introduce you to the

(Deposition of William A. Mahr.)

paying teller, and I will give you the money. McMurtry had said that that would be about what we would get out of part of the land that we would sell. He said that at the time he brought me this ratification. I signed this check at the Second National Bank where I met Searls. Thickens had requested me to see him there. Walker, Wilson and Metz were also there.

Q. Does not the fact that your name, William Mahr, appears directly underneath the typewriting, which is now on the back of that check, indicate to your mind that the typewriting was there at the time you signed it? A. There must have been something there or I would not have signed my name so low down, I am sure. Yes, my custom is to endorse a check near the end. I did not read it, and I don't remember reading it. No, there was no explanation made by anyone at that time as to any writing on the back of the check. Was with Searls at that time just long enough to get the cash. No, there was no conversation when I signed the check as to the source of the money. Mr. McMurtry said when the transaction was closed with the people he was going to sell a part of the land to, I would get \$250, or thereabouts. The next transaction was about a year later. [472—366] Mr. McMurtry called on me and said that he had formed the Pacific Oil Lands Company, in order to protect the locators' interest, and that he had 1000 shares of stock for me. Think that was in September, 1911. No, had no talk with anybody about these

(Deposition of William A. Mahr.)

California lands between the date of September 26, 1910, when I received the \$250, and the time McMurtry gave me the shares of stock, and received no advice at all about them or made any inquiry.

(Stock certificate No. 17 of the Pacific Oil Lands Company shown witness.)

Don't know whether that is the certificate given me by McMurtry or not or whether the receipt on the stub of certificate No. 17 bears my signature. (Certificate No. 17 exhibited to witness.) The signature resembles mine but I don't remember signing it. I received only one certificate of stock in this company. When he gave me this stock McMurtry said that he had organized this company to protect all the interests of the locators, and that the stock was worth a great deal more than the face value would indicate; that to put it away and not sell it to anyone. That conversation was in my office. All four of us boys, Metz, Wilson, Walker and myself were present. No, I was not advised at that time as to the number of locations made by McMurtry under my power of attorney or the area or extent of lands so located or the development of any lands so located. Yes, I then knew that contracts had been made but not what disposition had been made of the contracts. Knew that there was a million shares of stock issued by the Pacific Oil Lands Company but did not know to whom it was issued other than the locators, who got a thousand shares each. Did not know that McMurtry had any shares or Hoepfner. Made

(Deposition of William A. Mahr.)

no inquiry at that time of [473—367] McMurtry in regard to the number of locations or area of lands located or as to what had been done under the contract of August 4, 1910, or any supplemental contracts. Don't know that I made any such inquiry of any person at that time. I don't know just what the line of thought might have been; we may have talked it over, but what was said, I do not recollect; in a general way we may have talked it over, that we were to get stock, the boys around the office. Made no such inquiry of McMurtry or anyone connected with the Pacific Oil Lands Company or of Herrin and his associates or the Associated Oil Company. When McMurtry delivered this stock he was there long enough to give it to the four boys and to tell them about it and get out. No, don't recall that there was any conference or conversation. The next incident that occurred in connection with these oil land transactions was in 1912 and 1913, I received a notice of the meeting of the Board of Directors of this company. Received this first notice in about the summer of 1912. No, no information was given as to these lands. In the latter part of 1913 I received a notice and a proxy to sign so that the directors—the Board of Directors—could distribute a dividend which they had and which I signed and returned to them.

Yes, Plaintiff's Exhibit 46 is the proxy that I executed. (Said Exhibit No. 46, the same being

(Deposition of William A. Mahr.)

executed August 12, 1913, offered and read in evidence and is as follows:)

(This is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman and purports to have been executed by Wm. A. Mahr, August 12, 1913.) [474—368]

(The substance of Plaintiff's Exhibit No. 40 stated to witness.)

Yes, that is about the substance of the communication I received with the proxy. The next transaction was about a month later when I received a dividend check for \$20. (Plaintiff's Exhibit 47, the same bearing date December 9, 1913, shown witness.) Yes, that bears my signature. Yes, it was shortly after I received that paper (Exhibit 47) that I received this \$20 dividend. (Said Exhibit 47 offered and read in evidence as follows:)

(This is a consent to dividends similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman and purports to have been signed by William A. Mahr, December 3, 1913.) [475—369]

(Witness shown Plaintiff's Exhibit No. 32, a letter dated December 3d.)

Yes, I received a letter similar to this.

(Plaintiff's Exhibit No. 41, dated January 8, 1914, shown witness.)

Yes, I received a letter similar to that.

(Plaintiff's Exhibit No. 35 shown witness.)

Yes, I received a report which is probably the same

(Deposition of William A. Mahr.)

as that. Yes, I think I have these papers or copies and will produce them. The paper I now hand you is a copy which I had made of four typewritten sheets which I received. (Said paper offered in evidence as Government's Exhibit No. 48 purports to be a copy of Plaintiff's Exhibit No. 35.)

I finally surrendered my stock certificate No. 17 to Mr. Searls in the Spring of 1914. Mr. Searls called on me and said it was necessary to get all the stock into one hand, so that they could fight this thing successfully, as the Government was trying to reclaim the lands, and in order to do this successfully, it was necessary to get all the stock into one hand, in the hands of Mr. McMurtry. He said he would give me \$250, and I told him the amount was very small, inasmuch as when Mr. McMurtry gave me that stock he said it was worth a great deal more than the face would indicate, and not to sell it, and he told me the \$250 was all I would get, or anyone else, and that is all they could afford to pay for it. The whole thing didn't amount to much, and if I did not take that, I would get nothing. Yes, I signed an assignment on this certificate. The assignee's name was not written in when I signed it. No, after surrendering this certificate I never received anything more from the Pacific Oil Lands Company or on account of the lands located by McMurtry [476—370] under my power. When I surrendered that certificate the only information I had as to the resources and assets of the company was what was contained in the report

(Deposition of William A. Mahr.)

which I received. No, I did not then know how many locations which had been made in my name were affected by the contracts of August 4, 1910, and the subsequent ones growing out of it, or how many acres of land located in my name were affected by these contracts, only as shown in the report, and made no inquiry at that time of anyone concerning this. I began to inquire into it after Mr. Helm came to our office in September, 1916. He came in to find out if I had signed it, the power of attorney, and the different papers which he had, and wanted to know if I would come to San Francisco as a witness. I was under the impression that Mr. Helm was an agent of Mr. McMurtry's, and I had no other means to state whether he was or was not, and I did not feel as if I wanted to do anything for Mr. McMurtry in looking up the report; that he must have, according to the statement, sold the land for \$1,300,000, and that he had other moneys which he had received, and I figured the enormous amount that he got out of it, and we as his clients, and he as our agent, we should only get approximately, well, \$520. Mr. Helm asked me if I signed the different papers, and I told him yes, and he asked me to come to San Francisco as a witness and I told him I would let him know and that is about all that transpired. He showed me photographic copies of my signature to the ratification and one or two others. Don't know just what they were, I think, the ratification and the power of attorney. Yes, I went to San Francisco as a witness. No, was not put on the stand by the

(Deposition of William A. Mahr.)

defendants or interrogated on these transactions.
[477—371]

Cross-examination.

The other signers of this power of attorney signed outside of my presence. Yes, I have met George F. Handel, the Notary Public, or Commissioner of Deeds. Had no business dealings with him, just social. No, I don't dispute his certificate to that power. If Mr. Handel's signature is there, I signed it before him. No, I don't dispute the acknowledgment. Yes, all the signers of this power of attorney on which my name appears, except Welch, had thus been employed in the office of Thickens and Nixon for several years and were on the best of terms.

Q. Had you, before the signing of the power of attorney, discussed or talked over with Walker or Romaine, Keenan or C. Rupert Walker, or Eugene Metz, or either or any of them, the fact that Thickens had talked to you or to them about signing the power of attorney, and taking a chance of making some money out of that, in California? A. Never talked that over. Q. Never did? A. No, sir. Q. Now, this power of attorney, have you read that to-day? A. Yes, sir. Q. You read the power of attorney, I don't mean the ratification. A. No, not the power of attorney. Q. Well, will you kindly read it now and see if it refreshes your memory at this time as to whether you read it or not, and knew the powers that you vested with Mr. McMurtry in locating lands, and to sell or contract for the same so as to develop and improve them? A. There was

(Deposition of William A. Mahr.)

no necessity of my reading that thoroughly because I had had many conversations with Mr. Thickens regarding the possibilities of the oil lands in California, and Mr. McMurtry's ability as a locator, and I was anxious to sign the power of attorney when I was approached, regarding it, because I wanted to naturally associate myself with [478—372] a company or organization that was going to try and develop and help locate these lands.

No, at or before the time of signing this power McMurtry had never said anything to me about the matter. No, Thickens had never said anything to the effect that he was asking me for the use of my name to take up lands for McMurtry, nor was there any suggestion or insinuation made to that effect by Thickens or any of the other signers of the power that McMurtry was to have any interest of any kind in the lands that were located. No, at the time I signed this power I had no intention of permitting McMurtry or anybody else to use my name for locating lands for themselves, nor did I intend to assist anybody in obtaining more mineral land than they were entitled to or to defraud the Government. No, I had no other intention than that McMurtry as my attorney should legitimately and honestly locate lands for me and my associates as could be legally and profitably located for me and in my name. Yes, Mr. Thickens said that if I executed this power and McMurtry did locate lands, a report of anything of importance would be made to me.

Q. Is it not a fact that Thickens also said to you

(Deposition of William A. Mahr.)

that if he, Mr. McMurtry, located lands in your name, and in the name of your associates out there, that he would attempt to there, as your attorney, finance the matter so as to do the assessment and development work without the necessity of calling upon you for funds. A. I do not recall him saying anything regarding that, Mr. Ach. He may have said it.

As to assessment work and expenditures, that was left entirely to Mr. McMurtry to work out. No, at the time I received my stock I did not know how many of the million shares had been issued. McMurtry said it was a close corporation, [479—373] formed to protect the locators' interest. The fact is that we all got 1,000 shares and we took it for granted if all of us were there and got 1,000 shares, that was what was coming to everybody else. No, I don't think that at the time I signed that ratification that McMurtry told me that the contract with Herrin had been transferred to the Pacific Oil Lands Company. Yes, I understood that whatever the locators had, had been transferred to the company. Yes, McMurtry told me that or to that effect that all the interests of the locators to be combined in the Pacific Oil Lands Company, or whatever the interests were, or would be in them. He said they would have to sell part of the land in order to work the balance. I judged that he was still working to develop. He said when he went back with the ratification he would receive some money and that my share would be about \$250 and the balance would go to make the 'and which he still retained. The reason I made no

(Deposition of William A. Mahr.)

inquiries of McMurtry, Thickens or anybody concerning this was I entrusted Mr. McMurtry as an agent, and he knew that business thoroughly and I knew when anything of importance came up that he would notify me. Thickens had told me that and when he came for the ratification he was notifying us that he was going to sell part of these lands, saying that he was notifying or would notify us as things developed. That is the way the thing impressed me. The only detailed report I received was with this \$20.00 dividend check. No, sir, I never modified or set aside this power of attorney. (Check No. 114 shown witness). I have no recollection of any explanation being made concerning any typing on the back of that check at the time I endorsed it. Yes, his other three associates, Wilson, Metz and Walker were all present at the bank when I signed that check and all signed similar checks. I don't remember of any [480—374] talk concerning the typing on the back of the checks. No, I would not say positively that Mr. Searls made any such explanation. I am sure I would have read that typing if I had noticed it. No, Mr. Searls didn't say anything about that writing. I am sure of that; nor did he mention it to any of the others in my presence. When McMurtry delivered me this stock in the Pacific Oil Lands Company he said that he had organized the Pacific Oil Lands Company to gather together lands so that the locators, and to form this company so as to protect the locators' interests in the property already located. He said it was solely

(Deposition of William A. Mahr.)

for the protection of the locators, and he was giving us 1,000 shares, and I took it for granted he was giving everybody else 1,000 shares. Yes, by "us" I mean the gentlemen who were connected with me. No, I never had a personal acquaintance with Francis S. Pratt, W. E. Christman or Hamlin E. Hatch. I knew Mark Hatch. Knew Walter Wilson and J. E. Farrell and knew they were locators. No, did not know Samuel R. Banks, Frank B. Chapman, Julian P. W. Richmond, Frederick S. Thorn, Charles W. Gardiner, Harry B. Thorn, George W. Berry, George A. Neinecke, Frank D. Taylor, Edwin L. Powell, Daniel W. Darling, J. W. Pentz, S. H. Freeman, C. W. Thorn, J. F. Harder, and F. H. Searls. First met Searls when I got the \$250 at the bank where I also met C. W. Thorn. Yes, I knew when I parted with my stock that if the Government took away the lands the payments under the contracts with the Associated Oil Company would stop and there would be no further obligation on the part of the Oil Company to make any more payments.

Q. And didn't you also understand from this report that all the located lands were included in the contract with the Associated Oil Company and that they were practically all of the [481—375] properties, with the exception of the property in San Benito County, which the Pacific Oil Lands Company owned or controlled? A. I was under the impression that all the lands from that report, all of the lands that the Associated Oil Company had bought over, was in that Pacific Oil Lands Com-

(Deposition of William A. Mahr.)

pany, or payments of same. Q. There was in this contract or in this report a notice that the contract of August 4th, 1910, was amended in August, 1913, and that new negotiations were consummated whereby the Associated Oil Company agreed to buy the 1440 acres and pay \$1,375,000 for them \$75,000 down and the balance in monthly installments of \$20,000 per month. Now, were you not advised when you received this report that the Associated Oil Company did pay \$75,000. A. No, sir? Q. Were you ever advised that the Associated Oil Company had paid \$20,000 a month after August, 1913, or any installment of \$20,000 provided for in the contract of August, 1913, as reported in this paper? A. None beyond the one that we got a \$20,000 dividend from. Yes, I had that report in my hands about two months when I parted with my stock in this company. When I got the report I read it over and thought it was a wonderful proposition, and that there was lots of money coming in there, and I had known Mr. McMurtry through Mr. Thickens for a long time; had been given to understand all the many charitable things he had done for Mr. Thickens and others, and that he was a man of wonderful character, a man of great ability, and an absolutely honorable man; and I had no reason to doubt that he was not acting in good faith with me, and I believe when he told me something, that he was telling me the absolute truth, and therefore I did not question him at all. Yes, it is true that what Searls said to me caused me to believe that

(Deposition of William A. Mahr.)

there was little chance of my [482—376] succeeding in holding these lands as against the Government, which I relied upon, and parted with the stock for \$250. No, I would not have signed the power of attorney if I had known McMurtry or any person acting for me intended to use my name to defraud the Government.

Redirect Examination.

Yes, Mr. Helm visited me in New York in September, 1916. No, no special agent of the General Land Office or any other branch of the Government visited me and interviewed me in September, 1916, with regard to these matters. Yes, a special agent called on me about April 23 or 24, 1914 and asked me about the proposition.

Q. In New York City on April 23d or April 24th, 1914, that you told Mr. J. McG. Williamson that you had signed the power of attorney in December, 1907, principally as a favor to John S. Thickers? A. No, sir. Q. Did you not also tell him in that conversation that you had received \$250 from Mr. McMurtry on account of these oil land transactions, and that you considered that \$250 more in the light of a gift from Mr. McMurtry, or a pickup? A. No, sir, positively not. Q. Didn't you also tell Mr. Williamson in that conversation that Mr. McMurtry had treated you royally in the transaction and that you were thoroughly satisfied at that time with the outcome of it? A. No, sir, I did not. Q. Did you not also tell Mr. Williamson in that conversation [483—377] that you had received the \$20.00 dividend in Janu-

(Deposition of William A. Mahr.)

ary, 1914? A. No, sir, I did not. Q. Did you not also tell Mr. Williamson in that conversation that you had received \$250 for your stock from Mr. Searls and that Mr. Searls was then in town and that he, Mr. Williamson, could interview Mr. Searls about the matter? A. No, sir. Q. And did you not also tell Mr. Williamson in that conversation that Mr. Searls was in the City of New York, stopping at the Knickerbocker Hotel, or in substance that? A. No, sir. Q. Is it not also a fact that in April, 1914, after Mr. Williamson's first visit to you, that you personally consulted with Mr. Harry Randall in regard to this matter? A. No, sir. Q. And after that you had consulted with Mr. Harry Randall, who was then acting as your attorney, Mr. Williamson came back to you and you would not talk to him further about the matter? A. I never saw him the second time. Q. Are you one of the plaintiffs in the suit of William A Mahr and others, against L. B. McMurtry and others, pending in the Superior Court of the State of California, in and for the City and County of San Francisco? A. Yes, sir. I don't know who furnished the information upon which the complaint was drawn. Believe it was secured from the records of the court. I gave him the facts just as I have given them here to you to-day.

(It is stipulated that a suit against McMurtry and others for an accounting in these transactions was pending at the time of the taking of this deposition.)

Deposition of Joseph Edward Farrell, for Plaintiff.

JOSEPH EDWARD FARRELL, called April 23, 1917, on behalf of plaintiff, testified by deposition as follows:

Am a woolen salesman and reside at 1548 President Street, Brooklyn. Am thirty-two years of age and have lived in Brooklyn all my life. In December, 1907, was in the employ of Nixon and Thickens at No. 79 Fifth Avenue. John B. Thickens was one of the partners in this firm. Was not then acquainted with L. B. McMurtry, F. H. Searls or C. W. Thorn, or any of the officers, or anyone connected with the Empire Oil & Development Company, and hold no stock in such company.

Q. The records of Kern County, California, disclose that there is therein recorded a power of attorney which was executed by J. E. Fannell, or J. E. Farrell, on the 19th day of December, 1907 (substance of Plaintiff's Exhibit No. 6 stated). Are you the F. E. Farell whose name appears on that instrument? A. Yes, I am. Signed it in the office of Nixon and Thickens in the presence of J. B. Thickens. Don't recall that Mr. Handel was present or that I appeared before a notary. The circumstances of signing that paper were Mr. Thickens said that his friend, Mr. McMurtry, was about to go to California—was in California at that time—and he asked me if I could give him my power of attorney to locate oil lands in California; he said it would be a good thing for me if it turned out to be all right. That is all that I recall and I don't recall any other

(Deposition of Joseph Edward Farrell.)

conversation prior to that conversation at the time of signing. Was then sitting at my desk. Don't recall anyone other than Thickers [485—379] being actually present. After signing we always talked it over in the office, you know; other matters would come up about the Empire Oil Lands, about the things and we often talked about the oil, and the prospects of getting something out of it some day. As to the Empire Company, I heard that they had formed this and got some of the fellows around the office to invest in it. To the best of my knowledge, the thing had not panned out right, and I think they failed shortly after that or about this time. In 1910 I learned that land had been located by McMurry under this power. Mr. Thickers came to me and stated it would be necessary to ratify the original power of attorney; that they had a chance to sell some oil lands, some of the lands, and in order to hold what they had located it would be necessary to sell part of them, and the paper was presented to me.

(Plaintiff's Exhibit No. 49, a photographic copy of the ratification shown witness.)

Yes I should think that is a copy of the one I signed. That is my signature.

(Plaintiff's Exhibit No. 49 offered in evidence with this deposition and is as follow:)

(This is similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman and purports to have been executed by J. E. Farrell, August 25, 1910.) [486—380]

(Deposition of Joseph Edward Farrell.)

When Thickens presented this paper (Exhibit 49) he stated that Mr. McMurtry—I think that he called him “Mack”—had a chance to dispose of some of the lands, and my signature would be necessary in order to ratify the original power of attorney, and that in order to hold all of the lands, why, they would have to sell part of them. Yes, he said there would be something coming later on. No, I did not then know how many locations had been made nor the area—not exactly. I knew under the homestead act each citizen would be entitled to a quarter section, but knew nothing about the mining laws or whether or not they were different from the homestead laws. No, I have never located any land under either law. No, I did not at that time seek any advice as to the number of locations that had been made or the area of land upon which my name had been used. Yes, I went before Notary Goetting when I signed Exhibit 49. Before signing I think I had gotten in touch with Mr. Mahr; I think they consulted with a lawyer to find out, to find out if it would be all right to sign that. No, made no inquiry as to the contract of August 4, with Herrin and others, for the reason that at that time we were separated from Nixon & Thickens, and Thickens came to me at that time—well, I had left his employ at that time and I was not on very good terms with Mr. Thickens, but I didn’t take it up with anybody else. No, I did not know from any source at that time what the contents and effect and purport of that contract was and did not in-

(Deposition of Joseph Edward Farrell.)

quire of anybody on the subject. No, nothing was said by Dickens as to the development of the lands being paid for out of the production from the land, not at that time—not at that time was anything said by him about the lands themselves being paid for out of production from the lands. After signing the ratification, the [487—381] next transaction was when C. W. Thorn came to my office and said that there was something coming to me from the sale of the lands and paid me \$250 in cash. He said that in order to save me a trip up to the bank, he had brought the cash with him, and if I would just endorse the check, he would hand the cash right over to me.

Q. I invite your attention to check No. 171, which is, in substance, as follows:

“No. 171. New York, September 11, 1911.
Second National Bank of the City of New York.
Pay to the order of J. E. Fannell”—that is the way it is spelled here, “F-a-n-n-e-l-l”—“Two hundred and fifty dollars. (Signed F. H. Searls.”

The reverse side of the check has the following typewriting:

“Received from L. B. McMurtry, \$250 in full payment for all my right title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907.”

(Deposition of Joseph Edward Farrell.)

And immediately below it, the signature, "J. E. Farrell." I notice there you have separated the "r's" so that it cannot be confounded with Fan-nell? A. Yes, sir, that is the way I sign it now. Q. Is that your signature on the back of that check (showing)? A. Yes, sir. Q. Was the typewriting I have read upon the back of the check at the time you appended your signature to it? A. To the best of my knowledge it was not. Q. Did you look at the check before you signed it? A. Why, Mr. Thorn just said, "Just endorse this check." This is the substance of the conversation, "Just endorse this check. I have the cash with me, and [488—382] that will save you a trip up to the bank." Q. Does the fact that your signature appears down from the top of the edge of the check indicate to you that there was anything written or printed upon the check above where your signature was put at the time you put it there? A. I should say now, judging from that, that it was there. Q. That the typewriting was there? A. Judging now, yes, sir; but I cannot remember that it was there then.

No, I have no recollection of having read that typewriting on the back of this check, and reading the same does not now refresh my memory. I am not positive, of course, that it was not there, but I don't remember; I simply signed that endorsement and handed the check back to Thorn and he gave me \$250. No, never purchased stock on any other company. Mr. Thorn wanted me to invest in the Columbus Midway, and tried to impress upon

(Deposition of Joseph Edward Farrell.)

me how foolish I was that I didn't invest it. I understood that this \$250 was from the sale of part of the lands. No, Thorn said nothing about the condition of the lands or what disposition had been made of any of them or anything about the contracts and I made no inquiry of him on these subjects. He was there just *long for* me to sign the check and receive the money and talk about a few things in general. No, I made no inquiry of Thorn as to what development was going on nor did I know how many locations had been made or the area of lands covered, and made no inquiries of anyone. No, I made no such inquiries between the signing of this ratification on August 25, 1910, and the signing of this check on September 11, 1911—not to my knowledge, nor did I talk to anyone about it, only that we used to talk it over among ourselves. Don't recall during that time having asked Thickers anything about it, nor did I ask him about it at the time I signed the ratification. The next transaction that I recall was [489—383] we got a message that Mr. McMurtry wanted to see us at the Waldorf. That was just about the time, September, 1911. I then went to see McMurtry. I was introduced to him, and he said, he started in to tell about the hardships in locating these lands in California, and how they had to practically camp on the land, and with shotguns to keep off the claim jumpers, and he went into detail about this matter, and then he said that he had formed the Pacific Oil Lands Company just as a protection for all the fellows who had located,

(Deposition of Joseph Edward Farrell.)

and then he gave us 1,000 shares in the Pacific Oil Lands Company. Romaine and Keenan were there and I believe C. W. Thorn. That is the first time I met McMurtry. Didn't know Frank H. Searls at that time. No, I did not ask McMurtry how many locations had been made or the area or the development or anything about the contract of August 4, 1910, or any other contract. No, I did not know of any other contracts or the actual holdings of the Pacific Oil Lands Company. I believe at that time he told us not to dispose of the shares under any circumstances, as they would prove very valuable for us, and that at that time, they were worth about \$2.00 a share. Yes, he then gave me a certificate of stock. (Stock certificate No. 41 of the Pacific Oil Lands Company shown witness.) Yes, that is the certificate and that is my signature on the receipt on the stub for 1,000 shares, dated September 13, 1911.

Q. Does the date September 13, 1911, recall to you, or refresh your memory as to the date on which Mr. McMurtry gave you this certificate? A. Why, I know it was shortly after we received the money that we received the certificate. Shortly after I received this certificate from McMurtry we received a statement. (Plaintiff's Exhibit No. 51 shown [490—384] witness.) Yes, that is my proxy. (Plaintiff's Exhibit No. 40, dated August 4, 1913, shown witness.) Yes, I received a notice similar to that shortly after I received this proxy executed August 15, 1913. Thorn presented this

(Deposition of Joseph Edward Farrell.)

proxy for my signature to me at 215 Fourth Avenue. Don't recall what he said. I think we got in touch with the rest of the fellows, and, if I am not mistaken, they had taken it up, with an attorney, a friend of theirs; they had gone into the thing very thoroughly. I signed after consulting with them. By "the rest of the fellows," I mean, Mr. Mahr. No, I then made no further inquiries as to the number of locations, condition of the land or any contracts affecting the lands—not to my knowledge.

(Plaintiff's Exhibit No. 50 offered and read in evidence and is as follows:)

(This is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman and purports to have been executed by J. E. Farrell, August 15, 1913.)

(Plaintiff's Exhibit No. 51 offered and read in evidence and is as follows:)

(This is a consent to dividends similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman and purports to have been signed by J. E. Farrell, December 9, 1913.)

Yes, after I signed Exhibit No. 50 I received a "consent to distribution of dividends" and that was accompanied by a letter similar to the Plaintiff's Exhibit No. 32, dated December 3, 1913. After signing Plaintiff's Exhibit No. 51 I returned to California, and afterwards think I received \$20.00.

Q. I invite your attention to check No. 1201, which is in substance, as follows:

(Deposition of Joseph Edward Farrell.)

“No. 1201. San Francisco, 1/18/14. The Bank of California, [491—385] National Association, San Francisco. Pay to the order of J. E. Farrell, \$20.00. Pacific Oil Lands Co., F. E. Harrison, Secy. & Treas. L. B. McMurtry, Vice-pres.”

Endorsed on the back of that check is the name of J. E. Farrell and Amy S. Farrell. Is that your signature (showing witness)? A. Yes, sir. Yes, that is the dividend check I received by mail with a letter similar to Plaintiff's Exhibit No. 41, dated January 8, 1914, and there was a statement with the letter similar to Plaintiff's Exhibit No. 35, which I read at the time of receipt. No, I had not, before receiving that statement, made any inquiry as to the assets or resources of this company nor did I know how many shares of stock had been issued or who the stockholders were, only Mr. Mahr, Mr. Herbert W. Walker, Mr. C. Rupert Walker, Mr. Romaine, Mr. Eugene Metz, Mr. William Keenan and Mr. Walter Wilson. Think that was all I knew personally. I knew each one had received 1,000 shares. No, did not know when I received this dividend check whether or not L. B. McMurtry or E. A. Hoepfner were stockholders, nor did I afterward make any inquiry as to whether they were stockholders. In the conversation with Mr. McMurtry at the Waldorf he gave us to understand that this was a mere matter of form, that it was done to protect our interests. No, I made no inquiry as to who were stockholders in the corporation or the

(Deposition of Joseph Edward Farrell.)

assets or resources, in my conversation with McMurtry. After receiving that \$20.00 dividend check in January, 1914, I was in Chicago when I received a telegram from Mr. Thickens, and I think about the same time a letter from Mr. Mahr, or a letter from Mr. Randall, stating that Mr. Thickens would call upon me at my office in Chicago—I was stopping there temporarily, stationed there temporarily. I have not that [492—386] telegram or letter. Don't know what happened to them. The telegram from Thickens read that he would stop off in Chicago on his way east, and he would like to see me at the Hotel Sherman, I believe it was. The letter from Mahr said: "All the fellows had disposed of their stock in New York and things looked very dubious, and I had better send for my stock and dispose of it, too." Did not see Thickens in Chicago. Missed him. Later I received letters and finally a wire from Mr. Thickens when he arrived in New York, stating that Mr. Searls would be on his way west in a few days and if I cared to dispose of my stock, why he would gladly stop off, or in fact, have a talk with me. That was about March, 1914. Yes, Thickens called at my office in Chicago and we went over to a hotel. That was just before Easter, 1914. Searls said that the Government was about to start suit to recall the lands, and, from all appearances, it looks as if we were going to lose out, lose all our interest in the matter, but he thought that "Mack" wanted to see, or wanted to get something out of it, and that if we would just sign the

(Deposition of Joseph Edward Farrell.)

certificate he would hand us over \$250. No, I did not accept the proposition. Mr. Searls said I was very foolish to look at the matter in that light. Not to dispose of the stock, as I probably would not get anything out of it, and I told him that I thought I was going to consult with my wife, and that I would write her in detail all about the situation, and I believe he called at my home in Brooklyn.

The certificate was in Brooklyn, while I was in Chicago [493—387] after that interview. In about April or May, 1914, after I returned to New York, I was interviewed by Thickens and Mahr. Was also interviewed by Mr. Randall who was, I believe, attorney for the Pacific Oil Lands Company in New York. Mr. Thickens said all the rest of the fellows had disposed of it, and for us to believe what he had to say about the situation, and the best I would get out of the whole matter as a codefendant, and my share of the whole thing, would be part of the litigation, the cost of the litigation. He said the Government would bring suit to recall the lands. Mr. Mahr said I was awfully foolish not to dispose of it, and gave about the same reason. Randall said about the same thing. I then wrote McMurtry that I didn't care to dispose of my stock; that if there was going to be a fight, I would fight alongside with them, and that I wanted my share of whatever was coming to me. I received a letter in reply. I have not this letter. He said that he would be very glad to know that I was not going to dispose of my stock, and if at any time that I wished to dis-

(Deposition of Joseph Edward Farrell.)

pose of it, why, to communicate with him. That was along about June or July, 1914. In reply I received a check for \$100.00 accompanied by a typewritten form saying that my share of the moneys disposed of was \$100. Think Mr. Humphreys, my attorney in San Francisco, has all of this correspondence. About a month later I received a check for \$40.00. Then pretty near every month I received a check for either \$15 or \$20, up to about two months ago. Yes, the assignment of two shares of this stock to William Penn Humphreys, dated January 8, 1917, on the back of Exhibit No. 41 bears my signature, and I received a new certificate for the remaining 998 shares which I still have. Yes, I was in San Francisco last fall, when Mr. Helm called at my office at No. 257 Fourth Avenue and stated [494—388] I would be needed as a witness, and asked me if I would go, and I said I would, and did.

Cross-examination.

Yes, at the time I signed this ratification I knew lands had been located in my name in California by McMurtry, and that he had made contracts to sell some of the locations and that it was necessary in order to develop the remainder of the locations in order to preserve them for the locators. We locators in Nixon & Thickers' office talked that over pretty generally at the time and Mahr said, after consulting an attorney, that we should sign. I think something was said about it, about if it was legal. I think the idea was to guard our interest. Yes, to

(Deposition of Joseph Edward Farrell.)

the best of my knowledge I read that power of attorney before signing, and of the signers I knew Francis E. Pratt, J. C. Thickers, and Walter Wilson. No, nothing was then said by Thickers or anybody else to the effect that if any lands were located McMurtry was to have an interest in them nor was there any such understanding, nor was there any agreement or assurance that I would never be called upon to put up any assessment work money for development of the lands, nor did I ever modify or withdraw that power of attorney. No, I would not testify that the Notary Handel was not present and acknowledged that power. Yes, at the meeting with McMurtry at the Waldorf Hotel, he spoke of having had to hire others to aid and assist in preserving these lands and said it was practically a desert, sort of a hell-hole. Cannot recall that he mentioned that he had made a contract with a man by the name of McLeod, to spend money, and also with the Associated Oil Company to spend money on these lands for the purpose of getting oil, nor did he mention at that time that he had transferred contracts to the [495—389] Oil Lands Company, or that he had transferred the lands which had been located to the Oil Lands Company. My understanding was that the Oil Lands Company was formed in order to group our interests, that there was trouble brewing, and in order to group our interests in that way, he would be better able to fight it. Cannot say positively that he referred to trouble brewing with the Government at that time. I believe at that time I had read

(Deposition of Joseph Edward Farrell.)

numerous cases, if I am not mistaken, where the Government was suing the Southern Pacific. Yes, I had also heard about the withdrawing of lands by the Government. Yes, that was the character of litigation that I had in mind at that time. He said that this company was formed to group our interests and protect our interests and from that we would gather that in doing so we would make it as a unit, and would be able to fight then whatever would come up. Yes, I believe he did say that he wanted all those who had helped or in any connected with locating the lands, to benefit by it. Yes, I should say that that it was the general impression that the corporation was formed to protect the interest of the locators all the way through, and to pay the men who had helped, without paying them money. When I signed this check at the time time Thorn gave me \$250 I knew, at least I was positive, that it did not take away my interest in these located lands. I signed that check merely as an endorsement, and when I did sign the check I did not feel at the time that I was forfeiting any of my rights or interests in the lands located for me. I do not believe the back of the check was discussed, but I just merely endorsed it in order to receive the money from Mr. Thorn. I did not understand that I was transferring to McMurtry my interest in the located lands. We were just told that there would be more moneys coming to us. From my conversation with [496—390] Thickens at the time of signing the power, I gathered that if anything of interest developed, we

(Deposition of Joseph Edward Farrell.)

would receive reports from time to time. No, at the time McMurtry spoke to me about protecting the locators and paying with stock the men who had done the work on the lands, he did not state or intimate as to how he was going to be paid for his services; nor did he say all the locators were receiving the same proportion of stock, or speak about Major Hoeppner having worked on the lands or being in with him operating and protecting the lands for the locators. No, McMurtry never at any time spoke to me about the subject of his compensation, nor did McMurtry in his letters to me at any time advise me of the amount of stock he had in the corporation or what he had done with it, and I never asked him, nor did he advise me of the amount of stock that Hoepner, Harrison or Kay had or what that had done with their stock, nor did Thickens ever tell me anything about that. No, at the time of signing this power, or any time thereafter, did I have any intention of permitting McMurtry or any other person to use my name for the purpose of acquiring lands for their benefit or advantage. I signed the power to be a legitimate locator. No, I have never received any information from anyone that my name had been used or the power of attorney that had been given to McMurtry had been used for the purpose of making illegitimate or dummy or dishonest locations upon lands in California. [497—391]

Deposition of Walter B. Wilson, for Plaintiff.

WALTER B. WILSON, called April 24, 1917, by plaintiff, testified by deposition as follows:

Am a salesman for Nixon, Walker & Tracy and reside at 1520 St. Nicholas Avenue, New York. In December, 1907, was bookkeeper for Nixon & Thickers at 79 Fifth Avenue, and knew John B. Thickers, who was a member of the firm, and H. E. Bashore, who was manager. Have always lived in New York State, and prior to 1907, was never interested in acquiring title to any public lands and had no familiarity with the public land laws relating to the disposition of mineral or oil lands. First met L. B. McMurtry in 1910. Did not know F. H. Searls or C. W. Thorn in 1907. Had heard of the Empire Oil & Development Company but was not a stockholder.

Q. The records of Kern County, California disclose there is therein recorded a power of attorney. (Substance of Plaintiff's Exhibit No. 6 stated.) Are you the Walter Wilson whose name appears on that instrument? A. Yes, sir.

Signed that in the office of Nixon & Thickers in the presence of Thickers. I knew George F. Handel, the Commissioner of Deeds at that time. Cannot remember him being present or going to him and acknowledging that instrument. His office was on Pine Street. Did not go to his office. Thickers presented this power to me for my signature. No, its execution had not been a subject of conversation between myself and Thickers prior to that time.

(Deposition of Walter B. Wilson.)

He then asked me if I was twenty-one and if I would sign this power of attorney, giving a friend of his the right to locate lands in my name in California oil lands, and he told me that he thought it would be worth something to me some [498—392] day, and so I signed it. No, there was no other explanation that preceded this and I had no talk with any other person with regard to signing it. Don't know what Thickens did with it. Did not know these other signers, Francis E. Pratt, J. C. Thickens, William F. Chrisman, Mark W. Hatch, Hamlin E. Hatch, or T. R. Bailey. Knew J. E. Farrell. None of these were present when I signed; nor was Herbert M. Walker, H. E. Bashore, R. B. Welch, F. H. Romaine, Jr., W. A. Keenan, C. Rupert Walker, or Eugene Metz. Yes, William Mahr was present. Of those mentioned I knew Herbert M. Walker, Bashore and C. Rupert Walker. After executing this power I heard nothing more of this matter until 1910. Don't remember talking with anybody about it during that time. In about August, 1910, McMurtry came to the office with Thickens who introduced him to me. (Plaintiff's Exhibit No. 52, being a photographic copy of the ratification shown witness.) I signed that paper. McMurtry presented it to me. Said he had located lands in California for me and that they were quite large, and he did not have the capital with which to work them, all these oil lands, and he said he would be compelled to sell half of them to get money enough to work the rest, and that he would give me \$250 as my share

(Deposition of Walter B. Wilson.)

as part of the sales price, and that is all he could give. No, I did not sign it immediately. Mr. Walker, Mr. Metz, Mr. Mahr, and myself, we thought we would have a lawyer look it over and see if everything was all right in it, and we did not want to sign it unless it was. Then, after inserting the word "lawful" between the words "acts" and "made," signed it. Yes, I then read it. Made no inquiry of McMurtry with regard to the contents or purport of this contract of August 4, 1910. Cannot remember whether McMurtry told us as to the number of claims located. Have an idea he said something about how much [499—393] land was located in our names. Received no money at that time. Think John B. Thickers took the ratification. About three or four weeks later Thickers called upon the phone and told us to come up to the Second National Bank, Walker, Metz, Mahr and myself, and there met Searls and C. W. Thorn.

Q. I now invite your attention to a check which is, in substance, as follows:

"No. 115. New York, September 26, 1910.
Second National Bank of the City of New
York. Pay to the order of Walter Wilson,
Two hundred and fifty dollars. (Signed) F. H.
Searls."

On the back thereof, in typewriting, is the following:

"Received from L. B. McMurtry, \$250, in full payment for all my right, title and interest in and to all lands located by said L. B. Mc-

(Deposition of Walter B. Wilson.)

Murtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907."

And just below that is the name of "Walter Wilson" signed. Is that your signature to that? A. Yes, sir. Cannot remember whether the typewriting was on the back when I signed. Reading it I still cannot remember its being there. I just signed my name. Mr. Searls handed me the check and I signed it quick, that is all, as he wanted to get away. He said if there was any more coming we would get our share. Cannot say that I was advised as to the source of this money or the funds that were being distributed. Not at that time. Understood it was coming from McMurtry as part of the price of the sale of the lands that he sold. Got that understanding when I first met McMurtry. Did not know what lands. Did not ask Searls or McMurtry what lands had been disposed of. No, at that time [500—394] did not know anything about what had been done under the contract of August 4, 1910. After I signed the check handed it to Searls and he took it to the cashier and gave me the money. No, I didn't know anything about how these lands were going to be paid for and made no inquiry. No, at the time of signing this check no explanation was made of any typewriting on the back. Yes, the fact that my name is some distance from the top of the check would indicate to my mind that there was something written on the check above my signature.

(Deposition of Walter B. Wilson.)

The next I heard of this matter was in 1911. Mr. McMurtry came to our office and said he had formed a company called the Pacific Oil Lands Company, to protect the locators, and, as our share, he was giving each one 1,000 shares of stock. I was then employed by Porter & Wilson, 45 East 17th street. The only conversations I had concerning this matter between the time I signed the check and this visit were just talking among ourselves, Metz, Mahr, and Walker. When McMurtry came to see me in 1911, he said he had formed the company to protect the locators and that the stock was valuable and most likely in a year it would be worth double, and not to sell it. Don't remember that anything was said as to the resources or assets of the company. Believe McMurtry told how much land had been located, but don't recall how much. (Certificate No. 40, of Pacific Oil Lands Company stock shown witness.) That looks like the certificate that I had, and the receipt attached to the stub dated September 14, 1911, bears my signature, and that was about the date I received it. I then did not hear anything more of this until about 1913, and I had a letter from him, or a notice of a stockholders' meeting. (Plaintiff's Exhibit No. 40, a letter dated August 4, 1913, shown witness.) That looks like the same letter I got about three or four months [501—395] later we got letters, giving our proportion for the distribution of dividends. (Plaintiff's Exhibits Nos. 52 and 53 offered in evidence and are as follows:)

(Deposition of Walter B. Wilson.)

(Exhibit 52 is a ratification, and Exhibit 53 a proxy, similar in form to Plaintiff's Exhibits 1 and 5, respectively, with the deposition of Frank B. Chapman, except the insertion in Exhibit 52 of "lawful" as the 15th word from the end.)

(Plaintiff's Exhibit No. 53, proxy dated August 12, 1913, shown witness.)

Exhibit No. 53 bears my signature and I remember having executed it. Know at the time I executed Exhibit No. 53 there was no information given me by anyone as to the amount and quantity of lands that had been located or what disposition had been made of them or how the title or right of possession to them stood, and don't think I made any inquiry along those lines.

(Plaintiff's Exhibit No. 54 shown witness.)

Yes, that is the consent I signed in 1913. (Plaintiff's Exhibit No. 32, dated December 3, 1913, stated to witness.) Yes, a similar letter accompanied this consent that we signed and mailed back to San Francisco—Mahr, Metz, Walker and myself.

(Plaintiff's Exhibit No. 54 offered and read into evidence and is as follows:)

(This is similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman.)

Later I received \$20 by mail.

Q. I invite your attention to a check dated "San Francisco 1/8/14. No. 1200. Bank of California, National Association, San Francisco. Pay to the order of Walter Wilson, twenty dollars." and signed "Pacific Oil Lands Co., F. E. Harrison, Secy.-

(Deposition of Walter B. Wilson.)

Treas.," also L. B. McMurtry, Vice-Pres." Endorsed on the back are the names, "Walter Wilson," first endorsement; [502—396] "Geo. W. Plant," second endorsement, and the third endorsement is that of "Frederick Blaser." Is that the dividend check that you received in January, 1914?
A. Yes, sir.

(Plaintiff's Exhibit No. 41 shown witness.)

Yes, I received a similar letter with this check and a statement of the affairs of the company. Yes, it looked like Plaintiff's Exhibit No. 35. Yes, I read this report to stockholders at the time of its receipt. The next thing I heard of these transactions was in March, 1914. Mr. Searls came to the office and said that the Government was suing to get these lands back, and Mr. McMurtry wanted to take in all the stock so that he could now take up this case himself; that he did not want to bring all the stockholders into it, and he was buying up the stock. Yes, that is my signature under the assignment dated March 18, 1914, on certificate No. 40. I then received from Searls \$250 in cash. At the time I delivered up that certificate I had an idea it was 160 acres that had been located under my power of attorney; that is what we talked about in the office, Mr. McMurtry, and Mr. Metz and myself. At the time I assigned that certificate the only thing I knew about the disposition of the lands was from reading the report. Made no further inquiry at that time about the condition of the lands or by whom they were held. Received no other money after sur-

(Deposition of Walter B. Wilson.)

rendering the stock to Mr. Searls. In about September, 1916, Mr. Helm came into the office with Mr. Thickers and said he represented people that purchased the lands and wanted to know if I would go to California as a witness, which I did in November. Was in San Francisco about three weeks, but was not called as a witness in any litigation. No, at the time I surrendered this Certificate No. 40 in March, 1914, I did not know what the assets or resources of the Pacific Oil Lands Company were, [503—397] and made no inquiries at any time as to who the stockholders were or what number of shares each held.

Cross-examination.

No, I don't remember that Handel took my acknowledgment. What I said as to what Thickers said at the time of my signing the power of attorney is as near as I can remember what he said. Yes, he gave me to understand that McMurtry knew a lot about those oil lands in California belonging to the Government and that he was going to California to look over the land, and that if they looked like good oil lands, to locate in my name, and that I might make some money through that process. No, Thickers did not ask me to let McMurtry locate lands for his benefit in my name. Yes, I think there was something said at the time about the other boys signing it. No, there was no arrangement made with him and no understanding that he was to locate lands for himself. He was to locate lands for me to my advantage. That is what I thought

(Deposition of Walter B. Wilson.)

I was signing for. Yes, I saw Thickens produce the power of attorney. That is what he told me as near as I can remember. Yes, I read it over at the time. No, I did not intend that it should be used for the purpose of illegitimately acquiring any lands from the Government for myself or anybody else and no statement of that kind was made by McMurtry or Thickens or anybody. No, I never recalled, revoked or modified that power. No, at that time I signed the ratification nothing was said about the power having been intended not for the use of myself but simply for the benefit of McMurtry. As I understood what Thickens said when he asked me to sign the power, I was doing it for my advantage: I did not think it was just for Mr. McMurtry. Yes, that is as I understood it. Yes, I had this ratification in my possession several days before signing maybe three or four days [504—398] maybe a week. We had the attorney Worthen come to see us all together at Porter & Wilson's, No. 45 East 17th street. I talked with Walker, Metz and Mahr about it and I think I met Keenan and Farrell while I had it and talked with them. Yes, I knew at that time that this power of attorney had been recorded in Kern County, California, and we talked this fact over. No, there was no question then presented as to how much of the lands that were located in my name belonged to McMurtry. No, McMurtry made no statement to me that the lands he located in my name belonged to him, or that he owned any interest in them. Yes,

(Deposition of Walter B. Wilson.)

he did say that he was getting this ratification because he had made some contract, in order to save some of the lands, to give up some of the land and get money to protect the others and that the purpose of this ratification was to convince the people with whom he made this contract that he had a valid power of attorney and that the people who gave it were still alive and had not revoked it. Yes, I understood at that time that this ratification ratified the contracts made in my name by McMurtry, with Herrin and other people dated August 4, and all contracts, deeds and conveyances of and concerning contracts of sale of these lands. No, neither I nor Metz, Walker, Keenan or Farrell, so far as I knew, up to the time Mr. McMurtry asked for the ratifications, had put up any money in this thing. In consulting a lawyer, we just wanted to see whether it was legal or not. We didn't know whether it was legal. We didn't know whether it would hurt us or not in signing. Yes, I mean financially. Yes, I knew from McMurtry's statement then that there was some money coming to us and that in order to take care of the lands he would have to give up one-half to develop the other half. We never knew how much it was worth, but thought there might be quite a little [505—399] in it for us. Yes, we thought it would be a great deal more than \$250. Do not know that McMurtry said anything about having assessment work done. He said they had to look out that they did not jump the land and that they had had a lot of trouble. From what Mr. Thickens

(Deposition of Walter B. Wilson.)

said, we always trusted Mr. McMurtry, and we thought he was a very honorable man, and he said he was the squarest man in California, and that is what we always believed. Yes, when he brought the ratification we regarded that as a demonstration that he was on the level and square. Yes, he said he would let us know if there was anything further coming to us. I was twenty-three years of age in 1910. Yes, when we went to meet Thickens at the bank we went with the expectation of receiving the \$250. McMurtry had told us when we signed the ratification that \$250 was all he could give us. I did not know where this money was coming from but that is what he was going to give us. He said that before the ratification was signed. No, I did not understand that he was paying this himself. Yes, at the time we received this stock we understood that oil had been struck upon some of the located lands and that is what I thought the stock represented. I got that idea from something that was said at the time. Yes, at the time I received this report in 1914, I read it over and talked it over with Mahr, Metz, Walker, Keenan, Farrell and Bashore. Yes, I received the report before I sold my stock. We all talked it over before we sold this stock outside of the presence of Searls. Yes, Searls mentioned that there was serious litigation contemplated by the Government concerning the lands located in our names, and this part of the report reading: That is, if the Government shall take away the land sold, the payments under the contract stop

(Deposition of Walter B. Wilson.)

from the date of such taking away, and there is no further [506—400] obligation on the part of the Associated Oil Company, to make any more payments, was underscored. Yes, we agreed among ourselves that we had better take the \$250 and get out of litigation, and I believe Searls came in next day and we told him.

Q. Did Searls say anything to you at that time that even if you gave up this stock, there might be still something further coming from it? A. That is what we always thought. Something must have been said at that time to that effect. No, prior to the giving of the power of attorney or any time since then, I never intended that the power should be used in any way to deceive or defraud the Government or anybody nor did I intend by ratifying the contract to aid McMurtry in getting money illegitimately from other people, or to permit him to cheat or defraud other people in the handling of these lands, or make any misrepresentations. No, I never intended to be a dummy locator nor did anyone ever ask me to be, nor did I at any time intend that McMurtry should have any ownership or interest in any of the lands that might be located in my name, nor was there anything said between myself and McMurtry or Thickens as to any compensation that McMurtry was to have should the lands prove profitable. That matter was not broached.

Redirect Examination.

I was born October 8, 1886. No, I was never asked to advance any money or pay any money to be

(Deposition of Frank H. Romaine, Jr.)

expended in the development of oil upon any of these lands. [507—401]

Deposition of Frank H. Romaine, Jr., for Plaintiff.

FRANK H. ROMAINE, Jr., called April 24, 1917, on behalf of plaintiff, testified by deposition as follows:

Am employed by Samuel Hird & Sons, wholesale woollens, No. 257 Fourth Avenue, Reside at No. 118 West 72nd street, New York City. Have always resided in the State of New York, except for a short time in New Jersey. In December, 1907, was employed by Nixon & Thickens, wholesale woollens, 79 Fifth Avenue, as a salesman. Had never taken up any of the public domain and the only information I had concerning the requirements and privileges under the mining laws was that Mr. Thickens explained to me the power of attorney that I signed, and what I was signing. (Substance of plaintiff's Exhibit No. 4 stated.) Yes, am the F. H. Romaine, Jr., who signed that instrument. In the first place, I got into this oil idea through Mr. Thickens, who was a personal friend of Mr. McMurtry's and they came to me some time before this power of attorney was signed and asked me if I would take stock in this Empire Oil & Development Company—I believe that was the name, to the best of my recollection at this time—in any event, the name was the Empire Oil Company, and I took 400 shares of stock in this company and it was from that that it led into this eventually, the Pacific Oil Lands Company. When

(Deposition of Frank H. Romaine, Jr.)

I say "they came" to me, I mean Thickens came to me representing McMurtry. I bought these 400 shares of the Empire Company, paying fifty cents a share, less ten per cent off for cash, about a year and a half before. Did not know McMurtry at the time I signed that power. Thickens brought it to me and explained it, and explained the usage of selling California oil lands at that time, and he said there was no question but what the transaction was [508—402] clean, above the table, and all that, and of course he was one of my employers and naturally I thought that there could not be anything outside of what he said, and besides that, it was the way that lands were being located in California at that time, according to the laws of California, so I signed the power of attorney right then, after he had explained it to me. There had been several conversations prior to the time I signed it, such as the one made the day I signed it. Don't recall anyone else being present but Thickens and myself. Don't recall whether the Commissioner of Deeds Handel was there or not. Didn't know him personally. Knew he was a member of the firm of James, Schell & Elkus, because the senior member of our firm was a brother-in-law of a member of that firm. I signed it in the office of Nixon & Thickens; that I know. Did not go to Handel's office. After signing we talked about it practically right along, for the simple reason that Mr. Thickens stated that he expected on account of having invested in the Empire Company that he would like to see me in it and was almost sure that

(Deposition of Frank H. Romaine, Jr.)

I would get more out of this than I put in the other. The first distinct information that McMurtry, acting under this power, had located more land was, I think, at the time we were asked for the ratification. That was in about September, 1910. Thickens told me. (Plaintiff's Exhibit No. 55, a photographic copy of the ratification dated August 22, 1910, shown witness.) Yes, that is the ratification I signed. Thickens presented it to me. Did not see McMurtry at that time. I read it over before signing, but made no inquiry of Thickens as to what lands had been located or the quantity, except this, that I was told that a man could not locate more than I believe, the expression was, a quarter section. Thickens told me that at the time of [509—403] the signing of this ratification.

Q. Well, were you given the impression at that time that your name had been used only on one quarter section of land? A. No, it was not used any way in that land; it was just simply used as a locator of lands; they did not mention any sections, because we only knew it was in Kern County; we didn't know the address or the section, or what they went by, and I don't know yet. Q. What I am getting at is, what did you understand at the time, or was it your understanding at that time that your name could only be used on one quarter section of land? A. No, there was no understanding of that kind.

Yes, I read that ratification at the time, but made no inquiry about the contract of August 4, 1910. Don't think Thickens said anything about that con-

(Deposition of Frank H. Romaine, Jr.)

tract or anything except to reiterate what he at first told me, that it was absolutely all right to sign it. (Plaintiff's Exhibit No. 55 offered in evidence and is as follows:)

(This is a ratification similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman and is dated August 22, 1910.)

No, I was not then paid or promised anything. The next deal in regard to these oil land matters was about September, 1910, we were paid \$250 in cash by Mr. Searls and I believe Mr. Thorn was with me at the time at my place of business. Yes, that was September 11, 1911, instead of 1910.

Q. I invite your attention to a check which is, in substance, as follows:

"No. 164. New York, September 11th, 1911.
Second National Bank of the City of New York.
Pay to the order of F. H. Romaine, Jr., \$250.
(Signed) F. H. Searls." [510—404]

On the back of that check we find the following in typewriting:

"Received from L. B. McMurtry, \$250, in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907."

And immediately below that is the name of "F. H. Romaine, Jr." Is that your signature (showing witness)? A. That is my signature.

(Deposition of Frank H. Romaine, Jr.)

I have no recollection absolutely of that thing on the check that I ever signed,—typewritten. It was in my possession only while I was signing. Searls was there only five or ten minutes. He simply said to the effect that the dividend was being paid and he only brought me the cash so as to save me the trouble of going to the bank, and he gave me the cash for the check. My signature seems closer to the typewriting than I ever sign anything. No, I am not positive that the typewriting was not there, but I don't recall seeing that before. Searls said this \$250 was from the sale of part of these lands. No, I made no inquiry of him as to the number of locations or the area, but I was told—Mr. Thickens told me, probably from what he had heard from Mr. McMurry. He told me about that time. [511—405]

At the time Thickens gave me the ratification to sign he said there was practically twenty-eight hundred and some odd acres in Kern County, and some hundred acres in San Benito County. The nearest I can recall is about 110 acres, because it was one-thirty-second of twenty-eight hundred and some odd. That would be one-thirty-second, and that would be 180—must have been six hundred, and then in San Benito County 2010. That would figure right. Yes, that was the quantity of land affected by my location. I think that was what he said, as I previously told you, as a quarter-section. I only knew that this 2880 was in Kern County and to the best of my recollection about 800 acres in San Benito.

No, at the time I received this check, September

(Deposition of Frank H. Romaine, Jr.)

11, 1911, nothing was said about this contract with W. F. Herrin and others, and I made no inquiry of Searls or anybody except in a general way, just discussed the proposition broadly. No, I would not say that I did at that time make any inquiry about this Herrin contract of August 4, 1910. I think it was in 1911 that I received the stock in the Pacific Oil Lands Company. That was at the Waldorf Astoria Hotel, where I had gone to see McMurtry, and he, Searls, Thorn and several others were there. (Certificate No. 13 of this Company shown witness.) Yes, that is the certificate I received and the receipt on the stub, dated September 13, 1911, bears my signature. McMurtry handed it to me and said, "Be very careful and put it in the safe, put it in some safe place, because it is going to be very valuable." No, I did not then learn the resources and assets of the Company, or whether or not contracts had been made with W. F. Herrin and others had been transferred to the Company or the number of locations made in my name, only in the indefinite way that I have told you previously. Didn't have an [512—406] opportunity to inquire about anything because they were in a hurry. No, I made no inquiries because I was told we were going to have a statement shortly. Yes, I understood that Mr. McMurtry was a stockholder in almost all of it, the man that was at the head of it in every way, shape and manner, and naturally I presumed that he was not only a stockholder, but the big one.

Never met Major Hoeppner and did not observe

(Deposition of Frank H. Romaine, Jr.)

from my certificate that E. A. Hoepfner was president and made no inquiry as to him or what interest he had in the company.

Between the time I received this stock and the time I executed a proxy in 1913 the five or six of us there in the office who were interested talked over the matter constantly. (Plaintiff's Exhibit 56 shown witness.) Yes, that is the proxy mentioned and bears my signature. Thorn brought it to me there in the office and I think Thickens was with him. (Plaintiff's Exhibit 40 with the deposition of S. H. Freeman shown witness.) I think that letter is similar to letter that came with the proxy. Thickens said he would like to have McMurtry vote my stock. (Government Exhibit 56 read in evidence. This is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman and purports to have been extended by F. H. Romaine, Jr., December 9, 1913.)

After signing the proxy I received a dividend check for \$20.00 and a statement of the affairs of the company.

(Plaintiff's Exhibit 57 read into deposition. It is a consent to dividend similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman and purports to have been signed by F. H. Romaine, Jr., December 9, 1913.)

That (Exhibit 57) bears my signature. Yes, I received a letter with that similar to the letter shown me, dated *er* 3, 1913 (Plaintiff's Exhibit 32 with the deposition of *y* B. Thorn.) [513—407]

(Deposition of Frank H. Romaine, Jr.)

Q. I invite your attention to a check in substance as follows:

“No. 1179. San Francisco, 1/8/14. The Bank of California National Association, San Francisco. Pay to the order of F. H. Romaine, Jr., Twenty dollars. (signed) Pacific Oil Lands Co., F. E. Harrison, Secy.-Treas. L. B. McMurtry, Vice-Pres.”

On the back of that check is your endorsement, “F. H. Romaine, Jr.” Is that your signature to that (showing witness)? A. Yes, sir. [514—408]

Didn't read this report to stockholders (Exhibit 35) very carefully, though I remember receiving it. The next thing I recall was when Searls came and bought my stock for \$250.00. That was about December, 1914, I think. Cannot say definitely whether it was March or April, 1914, or not. Searls told me that the Company was not in good shape, and they were either going to sell out or somebody was going to buy the stock of the Company, and this was to be what I was to get from them. At that time Searls asked me for my certificate of stock in the Empire Company, saying at the time that as soon as Mr. McMurtry had straightened out some things regarding that, he was going to reimburse all the holders in the Empire Company for the investments which were made at that time. Yes, I delivered the Empire stock to Searls. No, have not received anything for it yet. The assignment on Certificate No. 13 bears my signature, which was put there when I surrendered it. No, I did not then

(Deposition of Frank H. Romaine, Jr.)

know definitely how many locations had been made in my name or the area of land located, only as I explained before, approximately 110 acres. Did not know what the assets or resources of the Pacific Company were at the time I surrendered this certificate. All I knew about the contracts with the Associated Company was what I learned from the statement. No, didn't know who the stockholders of the Pacific Company were. Believe Hoepfner was mentioned in that statement. Didn't know how many shares he or McMurtry held. Knew all the boys in the office had got the same number. This Certificate No. 13 was the only stock in this company I received. No, made no inquiry at the time I received this certificate as to the resources or assets of the Company or the contracts with the Associated Oil Company or the state of development of the [515—409] lands or area of lands. Have received no other money from this Company since delivering this certificate to Searls and have had no business transaction with the Company. Yes, after awhile we made a lot of inquiries about this Company. A representative of the Government called on me for a statement. I signed that power of attorney December 19, 1907, at the request of Thickens after being told it was a perfectly clean and legal proposition. Don't remember the Government representative who called on me. Yes, would say it was about April 23 or 24, 1914. Yes, he asked me to give him a statement in connection with these oil land matters, and I wrote him a statement (Plaintiff's Ex-

(Deposition of Frank H. Romaine, Jr.)
hibit 58 shown witness), and he read the same.
That statement (Exhibit 58) bears my signature.
I dictated it. (Plaintiff's Exhibit 58 offered in evidence.) Said exhibit is as follows:

Plaintiff's Exhibit No. 58.

"F. HALL ROMAINE & SON

Women's Wear Specialists,
215 Fourth Avenue,

New York, April 24th, 1914.

Dept. L. Bachmann & Co.

Removed to 257 4th Ave.

Mr. J. McG. Williamson,

c/o McAlpin Hotel,

33rd St. & B'way,

City.

Dear Sir:

In accordance with your request made of the writer I give you the following information concerning my connections with the Empire Oil & Development Co. also the Pacific Oil Land Co:—

To the best of my recollection it was some seven years ago that I purchased four hundred shares in the Empire Oil & Development Co., for which I paid \$180. During the general financial disturbances in the latter part of 1907, this company went out of business and I never received a dividend on the stock during the time I held it. [516—410]

While a stockholder in the company I became acquainted with L. B. McMurtry, who was one of the officers. Sometime after the company went out of

business I was requested by Mr. Thickens, at that time a member of the firm of Nixon and Thickens, for whom I was working, to execute some powers of attorney authorizing Mr. McMurtry to locate oil lands in my name in the state of California. Very little was explained to me at that time as to Mr. McMurtry's plans, but no payments of any kind were demanded of me, nor have I paid out anything in connection with the transaction since then. The whole matter of signing these powers of attorney was more a matter of accommodation to Mr. McMurtry and Mr. Thickens than for any other reason.

I paid little attention to the matter after signing the powers of attorney and know nothing of the business which McMurtry transacted in California. Some three or four years ago, I received one thousand shares of stock in the Pacific Oil Lands Co., for which no charge was made and which I understood was given in consideration of my being a locator of the California lands. Recently I received a dividend of \$20 on this stock. In addition to that, we were recently asked to turn in our certificate of stock, for which we were promised \$250. This I agreed to do. The return of money invested in the Empire Oil & Development Company was also promised me.

To the best of my memory these are the facts as near as I can outline them to you. I cannot, however, vouch for the time anywhere above stated, nor the amounts mentioned, except the two last, which are recent enough for me to be sure of.

Very truly yours,
F. H. ROMAINE, Jr." [517—411]

(Deposition of Frank H. Romaine, Jr.)

Cross-examination.

(Power of attorney, Plaintiff's Exhibit 4, shown witness.) I knew all of these signers, except Welch. Yes, I read it before signing it. Yes, my losses in the Empire Company were spoken of in connection with Mr. McMurtry's going to California or becoming agent on this power. Yes, Thickens told me that he and McMurtry were anxious to give all the persons who lost money in the Empire Company, persons that Thickens was connected with, an opportunity through his efforts to locate lands in California to make good their losses and make some money. Yes, Thickens told me at that time that I would be doing him a favor, because he got a lot of people interested in the Empire Company that had lost money. No, he did not ask me to sign so that McMurtry could get lands for himself. He located the lands for me. Nothing was said about McMurtry, Thickens or anybody else having an interest in the lands in case they were valuable, and there never was any talk between myself and Searls or McMurtry or any other person in which the subject of McMurtry's owning any interest in the land located should belong to him or that he should have any interest therein. No, I never had any intention that he should use my name for the purpose of obtaining from the Government any interest in mineral lands or minerals for himself. No, I never revoked, modified or set aside that power. No, Thickens never told me that I would hear from this again after signing the powers of attorney, nor did

(Deposition of Frank H. Romaine, Jr.)

Thickens or anybody else ever tell me prior to my signing the ratification that as soon as anything was done of importance, I would get reports upon it, not that I recollect. Yes, when I signed the ratification I knew that I was ratifying the power of attorney. I knew that some contract had been made by my agent with the people mentioned in the ratification concerning the lands located in my name. I [518—412] knew that the people with whom McMurtry was dealing demanded such ratification to show that they were real powers of attorney, that the people were still alive, and that the powers had not been revoked. Yes, I then knew that these people were going to drill on the lands and were going to pay so much a barrel out of the oil if oil was discovered, and knew that there was some question made on account of the withdrawal of these lands by the Government. I have heard of it very indirectly; I don't know whether I read it in the paper or not, but I did indirectly hear of it. (Extract from the report, Plaintiff's Exhibit 35, read.) Yes, that's where I saw it. Yes, hearing that read now refreshes my memory to the effect that I had heard of that danger before—danger of the Government's taking the lands from the locators or from the Pacific Oil Lands Company. Yes, my memory being refreshed; I now know that I was mistaken when I said I received this \$250.00 at my office. I received that at the Waldorf at the time I received this certificate of stock in the Pacific Oil Lands Company. Yes, it is true that I indorsed this check at McMurtry's

(Deposition of Frank H. Romaine, Jr.)

rooms at the time I got the certificate of stock. Yes, at the time I received the certificate I got the impression that this corporation was formed for the purpose of taking care of the interests of the locators, and McMurtry then told me that the contract this corporation had with the Associated Oil Company would make the property valuable, and that the contracts which I had ratified had been assigned to the Oil Company and held in that way. Yes, before getting this stock I had been told by McMurtry that oil had been drilled for and found on some of these lands. Yes, that must have been at the Waldorf in 1911, as that was the only time I was told anything by him. No, I haven't the slightest recollection of being advised at the time I signed that check that the writing on the back meant [519—413] nothing and was simply a matter of form. Yes, when I gave this Empire oil stock to Searls at the time he gave me the \$250.00 for the Pacific Oil Company stock, I knew that the Empire Company stock was worthless, and Searls said that McMurtry would pay me some day the amount I had lost on the Empire stock—when he had gotten his affairs straightened out. I understood the \$250.00 was for the Pacific Oil Lands stock. (Attention of witness called to letter, Plaintiff's Exhibit 58.)

Q. * * * Explain what you mean by that statement in that letter. A. In the first place, it was explained to me that it would be an accommodation to Mr. Thickens if I would do what I did, and also to Mr. McMurtry. That is where the ac-

(Deposition of Frank H. Romaine, Jr.)

commodation came in. In the second place, it was for my benefit to do so.

No, there was no statement by Thickens that I would be giving McMurtry any interest in the lands located. He didn't say anything about accommodating Mr. McMurtry. I think that is a mistake of mine.

Redirect Examination.

In my statement that I had some recollection of hearing of the attempt on the part of the Government to take these lands away prior to receipt of this report in 1914, I said it was indistinct in my mind, but I thought it was in the papers I had seen it. That report was the first definite knowledge I had of these threats. No, I do not know that J. B. Thickens was a locator on any of these lands. Yes, I know L. B. McMurtry was. Why, I was told so by Mr. Thickens, that he was the main one in the whole business. Yes, during all these transactions I had the idea that McMurtry was a locator and interested in these lands—that is, in the Pacific Oil Company. Yes, I mean that I understood that he was a locator in these lands that had been located by me and [520—414] others and had the impression during all these transactions that McMurtry was interested in these lands along with the rest of us. [521—415]

Deposition of Eugene Metz, for Plaintiff.

EUGENE METZ, called April 24, 1917, by plaintiff, testified by deposition as follows:

Was 31 years of age January 4, 1917; salesman

(Deposition of Eugene Metz.)

for Nixon, Walker and Tracy, woolens, at 45 East 17th Street, New York; and reside at 301 Laffertz Avenue, Brooklyn. In December, 1907, was a salesman for Nixon & Thickens, 79 Fifth Avenue. Never lived outside of New York and New Jersey, and was never in the West prior to last November and December, and prior to December, 1907, had never been interested in any company engaged in producing or developing oils. First met L. B. McMurry in 1910. Thickens introduced me.

Q. The records of Kern County, California, disclose that there is recorded a power of attorney which purports to have been executed by Eugene Metz and others (substance of Plaintiff's Exhibit 4 stated). Are you the Eugene Metz whose name appears on that document? A. Yes, sir.

Thickens came to me and asked me if I would give a friend of his a power of attorney to go and locate lands for me, and so I asked him what it was for, and he said to try and find oil, and he said to me if he found oil, you would probably make a lot of money out of it, and so naturally I became interested, and I was willing to sign it, and I signed it. I think that was the only conversation I had had with anyone before the signing. I then knew, as a citizen, I was entitled to some land in this country, if I could get it. My father had taken some farm land in Wisconsin and I didn't know but maybe I was entitled to the same thing. No, Thickens didn't say he was trying to get farm or mineral land. He said to try and locate land and get oil. No, I didn't

(Deposition of Eugene Metz.)

then know how many acres constituted a claim or how many persons [522—416] were required to make an association claim and received no particular advice on that matter from Thickers that I recall. Knew George F. Handel. Don't remember of going before him and acknowledging that paper. Cannot say that anyone else was present. Don't remember. No one else engaged me in conversation then. After signing the paper heard nothing of this matter until 1910 and had no conversation with any person concerning oil land matters during that time—between the signing of the paper and 1910. In 1910 McMurtry came into our office and said he had located oil lands, and he expected to get a lot of oil out of that land, and it was such a big proposition he would have to sell part of the land in order to get money to work the balance of the land; that it cost a lot of money to run the thing and the only way to get all of this money was to sell part of it and use that money. No, I didn't then know how many locations had been made, or the area, and made no inquiry of McMurtry. McMurtry then asked me to give him a ratification of my power of attorney. (Plaintiff's Exhibit 59, being photographic copy of ratification, shown witness.) That paper bears photographic copy of my signature and is the one I executed in August, 1910, at the request of McMurtry. About a month later I received \$250.00. McMurtry had told me that I would probably get \$250.00. Said it would come from the money he would receive for the sale of the lands. No, at

(Deposition of Eugene Metz.)

the time I signed that ratification I knew nothing about the matters set forth therein and made no inquiries of McMurtry or anyone else as to the contents or purport of that contract of August 4, 1910. We trusted him. I didn't sign this ratification when McMurtry brought it in. Stated that I wanted to look into it and see a lawyer, and we took it up with a lawyer and he read it over and he said it was all right, only insert that word "lawful." When I say "we," I [523—417] mean Mahr, Walker, and Wilson, who had been working for Nixon & Thickers, but were then with a different firm—Porter & Wilson. Mr. Worthen was the lawyer we consulted.

(Plaintiff's Exhibit 59 read into deposition. It is a ratification similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman, except the insertion of "lawful" as the fifteenth word from end, and purports to have been executed by Eugene Metz.)

This \$250.00 which I received about a month after signing the ratification was given me by F. H. Searls at the Second National Bank. Believe he was with McMurtry when I signed the ratification. Thickers told us that Searls was up there and if we went up there we could get our money. By "we" I mean Mahr, Walker, Wilson and myself.

Q. I invite your attention to a check which is in substance as follows:

"San Francisco, 1/8/14. No. 1182. The Bank of California, National Association, San Francisco. Pay to the order of Eugene Metz,

(Deposition of Eugene Metz.)

Twenty dollars. (signed) Pacific Oil Lands Co.
F. E. Harrison, Secy-Treas. L. B. McMurtry,
Vice-Pres."

I don't remember seeing that typewriting above my signature when I signed. Don't think it was there. The check was in my hands just about two seconds. Thickens handed me the check and said, "Endorse this, and I will identify you at the window." He wanted to get through with it in a hurry, and I handed it right back to him. Have no recollection of reading the typewriting or [524—418] its being there. He said it was money that McMurtry had promised me a month previous. It was for lands located for us. No, I didn't know to whom it had been sold and did not inquiry. The next I heard was about September, 1911, McMurtry came in and gave us one thousand shares of stock. Don't remember having had any conversation with anybody about this during that period, September, 1910, to September, 1911, and during that time made no inquiry with regard to these lands or their condition. Think Thorne came in with McMurtry to our office and gave us this stock. Yes, this stock certificate No. 16 of the Pacific Oil Lands Company looks like the one that I received, and the stub of the certificate bears my receipt, dated September 14, 1911. McMurtry then said he had formed a company to take the locators and that he had given me that stock and that was my share. No, I didn't then know how many shares of stock this company had or how many locations had been made under my power or

(Deposition of Eugene Metz.)

the area or extent of land located or the debts or resources of the company, or what had been done under the contract of August 4, 1910, mentioned in the ratification. No, I didn't know whether or not a supplemental contract had been made or any change made in the contract of August 4, 1910, and made no inquiries about any of these matters. All I said to McMurtry was, "How are things getting along?" and he said, "All right," and he said he hoped to do more for us later. He said, "Put that away in a safe and don't sell it, because it is worth its face value to-day," and if I wanted to sell it, to notify him and he would buy it back. Yes, he said then there was oil on the land—oil had been discovered—very large quantities. No, I didn't inquire of him as to what disposition was being made of the oil, or who the other stockholders in the corporation were. All that I knew were the locators. Didn't ask McMurtry if he was a stockholder or make any inquiries [525—419] as to Mr. Hoepfner. Didn't notice his signature on the stock. Did not know him. I next got a notice of a meeting of the Board of Directors in 1912 and one in 1913. (Plaintiff's Exhibit 40, dated August 4, 1913, shown witness.) Yes, I received a similar notice. Yes, I received a paper to sign—that was in about December, 1913—authorizing a distribution of dividends. That paper (Plaintiff's Exhibit 60) bears my signature and I remember having executed that proxy.

(Plaintiff's Exhibit 60 read into deposition. It is a proxy similar in form to Plaintiff's Exhibit 5

(Deposition of Eugene Metz.)

with the deposition of Frank B. Chapman and purports to have been executed by Eugene Mitz, August 13, 1913.)

Yes, this consent to distribution of dividends (Plaintiff's Exhibit 61) is the one I signed. It came to me through the mails, and that letter dated December 3, 1913 (Plaintiff's Exhibit No. 32), is similar to the one I received with it. The next transaction was the receipt of the dividend check which I received through the mail accompanied by a statement of the affairs of the company, also a letter similar to this letter, dated January 8, 1914, now shown me (Plaintiff's Exhibit 41). Yes, this statement of the company which I received was similar to the one now shown me (Plaintiff's Exhibit 35). Yes, I glanced over that report shortly after receiving it. The next spring Searls came up and he said he was sent by Mr. McMurtry to take up our stock.

(Plaintiff's Exhibit 61 read into deposition. It is a consent to dividend similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman and purports to have been signed by Eugene Mitz, December 9, 1913.)

When Searls came for this stock he said he was sent to [526—420] buy the stock by McMurtry; that everything looked bad; that the Government had instituted suits to reclaim the land, and if we didn't take this \$250.00 which he was offering for the stock, why we would get nothing, everything would be lost to all of us, and I fell for him. All I then knew about the condition of the company was

(Deposition of Eugene Metz.)

that everything looked black; everything would be lost. He gave us all \$250.00 each for this stock. I endorsed the assignment [527—421] in blank. The name Walter S. Brann was not in the assignment at the time and I then made no inquiry as to the resources and assets of the company, because he came and told us everything was down and out, and there could not be any assets. No, I made no inquiries as to the number of locations made or the area or extent, nor did I know, only I may have read it in the statement I got from the Company in January, 1914. Did not know what had become of the contracts of August 4, 1910, and the supplemental contracts referred to in the report, and did not know whether or not these contracts had been assigned to the Pacific Oil Lands Company. Yes, I went to San Francisco in November last and was there three or four weeks.

Q. Were you in consultation with anybody during that time?

A. We hired an attorney out there in the case we were starting against L. B. McMurtry. Yes, I spoke to Mr. Helm, Mr. Lawler and anyone that spoke about it. Was not called as a witness in any case, though I was out there ready to be called.

Cross-examination.

No, I was not interviewed by the Government and never signed any statement. (Attention of witness called to report, Plaintiff's Exhibit 35.) If the fact that these contracts were assigned to the Pacific Oil Lands Company appears in that statement, then I

(Deposition of Eugene Metz.)

knew it, but probably forgot it. Yes, at the time McMurtry got this ratification he told me that the money coming in from the contracts mentioned in the ratification was going to be used to develop the lands, and that it was doubtful whether the locators would get any of the money because the money was to come out of the oil found on these lands. The first I heard of the Government making the claim that they had withdrawn these lands [528—422] was when Searls came to me for the stock. No, I never undertook to set aside, modify or revoke this power of attorney, and no suggestion was ever made to me by Thickens or anybody that the use of my name was for the purpose of permitting McMurtry to locate lands for himself, or that in the event lands should be located it would redound to McMurtry's benefit in respect to the ownership in the lands located in my name. I understood I was a locator in my own right. Yes, after signing the ratification, the men in the office, Mahr, Romaine, Wilson, Herbert Walker, Rupert Walker and myself talked about this matter once in a while, about it probably being time to get some money from the lands. Yes, we understood this depended upon whether or not he located oil. No, I never had any intention in signing this power to cheat or defraud the Government. Yes, at the time I sign the power I knew some of these other signers, knew Harder, Keenan, Bashore, Walker, Romaine, and Mahr. No, none of those persons ever intimated that they intended that the locations made in their names were for the

(Deposition of Eugene Metz.)

benefit of McMurtry, Thickens or anybody else, nor did either of these persons or myself contend that our names had been used as an accommodation to McMurtry, Thickens or anybody else. Yes, I knew Hatch, Walter Wilson, and Farrell at the time I executed this power, when I signed this ratification I did so as an absolute locator and not for anybody else

Redirect Examination.

Don't remember Mr. J. McG. Williamson interviewing me on or about April 23 or 24, 1914, but if he was there, then I am the fellow. Don't remember who else was present. [529—423]

Deposition of C. Rupert Walker, for Plaintiff.

C. RUPERT WALKER, called by plaintiff April 25, 1917, testified by deposition as follows:

Am employed in the shipping department of Devoe & Taynolds, and reside at No. 17 McAuley Avenue, Jamaica, New York. Have never visited in the west, and prior to 1907 never acquired any public lands under the mineral land law and was not familiar with such law. In December, 1907, was working for Nixon & Thickens as bookkeeper, and knew John B. Thickens. Did not then know L. B. McMurtry, F. H. Searls, Daniel W. Darling, or S. H. Freeman, and had never owned any stock in an oil company. Don't remember knowing of the Empire Oil & Development Company prior to that time and had no meeting with its officers. I am the person whose name appears on that document (Plaintiff's

(Deposition of C. Rupert Walker.)

Exhibit 4). I was over in Nixon & Thickers and signed this paper for them. J. B. Thickers presented it to me. Don't remember any conversation with him prior to the time I actually signed the paper with regard to signing it. Remember going with Thickers before a notary there, but don't know who that was, though, now. Signed the paper as a favor to Mr. Thickers because he was my boss and employer, and I had full confidence in him. Don't remember just what Mr. Thickers said at that time, except that I know that I signed it as a favor to him, and the others had signed it. This was ten years ago, and it is very hard to bring it back to my mind. The next circumstances in connection with this matter was that in August, 1910, I received a letter from Mr. Thickers to come into the office, that he wanted to see me.

(Letter produced and read in evidence as Plaintiff's Exhibit 62, as follows:)

Plaintiff's Exhibit No. 62.

“Dear Walker:

Am very anxious to see you. Have something of interest to tell you. Are you working in N. Y. and could you come in to see me some day this week. Either write me or call me on phone 201 Stuyvesant. It is important, and know will be [530—424] welcome news. Just a little money coming to you, for your kindness in signing a paper for me three years ago. Will explain when I see you. Let me hear from you at once.

(Deposition of C. Rupert Walker.)

Aug. 17, 1910.

Sincerely,

J. B. THICKENS,

79 Fifth Ave.,

N. Y. City."

Between the time I signed the power of attorney and the receipt of this letter, don't remember having any conversation or conference with any person or persons with respect to these oil land transactions except Mr. Thickens had said that there would probably be some money coming to me. That was after I signed the power of attorney. After receiving this letter I did not call upon Thickens.

(Plaintiff's Exhibit 63, photographic copy of ratification dated August 22, 1910, shown witness.)

That is my signature. Mr. Thickens was working for some other firm at that time, just which I don't recall, and I went to his place of business. All that I can remember is that I signed this paper at that time. No money was then paid me. C. W. Thorn came to my office in 1911 and gave me \$250.

(Check No. 166, for \$250, dated Sept. 11, 1911, payable to C. Rupert Walker, similar to Defendants' Exhibit T, shown witness.)

That is signed "F. H. Searls," and on the back of that check is the following typewriting:

"Received from L. B. McMurtry, \$250.00, in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney

(Deposition of C. Rupert Walker.)

made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907."

That check bears my signature, but I don't remember that typewritten form on the back of that check at that time. C. W. Thorn brought it to my office and said that he brought the money in cash with him, and if I would just endorse the check, why he would give me the money in cash. Think he said it was from the [531—425] sale of oil lands. Don't remember anything else. Don't remember definitely what he did say. Had made no inquiries of anyone as to the number of locations made or the disposition of any lands located under the power, nor did I know anything about the purport or contents of this contract of August 4, 1910, mentioned in the ratification. Have not been in the office for a week; have been sick since that first day I was over. After I signed this check I got the money and put it in the bank. Later, in 1911, I received a certificate for \$1,000 shares of stock in the Pacific Oil Lands Company. This certificate No. 15 is the one. C. W. Thorn presented it to me. Came to my office with it. This receipt on the stub shown me, dated December 16, 1911, bears my signature. All I remember is his saying that McMurtry was giving these shares of stock to the boys. I mean the boys in the office of Nixon & Thickers. He may have told me why he was giving this stock but I don't remember. I paid nothing for this stock, and did not then know the area of land located or the resources of

(Deposition of C. Rupert Walker.)

this company. I knew who some of the stockholders were. Each got 1,000 shares, but that is all. Didn't know that McMurtry or A. E. Hoeppner owned any of it. Had never met McMurtry.

(Plaintiff's Exhibit 64 shown witness, same being proxy dated August 12, 1913.) That proxy bears my signature. Mr. Thorn must have come with it.

(Plaintiff's Exhibit 64 read in evidence. This is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman, and purports to have been executed by C. Rupert Walker, August 12, 1913.) [532—426]

(Plaintiff's Exhibit 66 read in evidence. This is a consent to dividend similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman, and purports to have been signed by C. Rupert Walker, December 10, 1913.)

I remember signing that paper. There was a letter with it, which I now produce.

(Said letter offered and read in evidence as Plaintiff's Exhibit 67, and is as follows:)

Plaintiff's Exhibit No. 67.

"PACIFIC OIL LANDS CO.

748, 749, 759 Mills Building,
San Francisco.

Telephone Sutter 471.

E. A. Hoeppner, President.

L. B. McMurtry, Vice-President.

F. E. Harrison, Sec'y and Treas.

December 3, 1919.

Dear Sir:

You are the holder of 1000 shares of the capital

(Deposition of C. Rupert Walker.)

stock of the PACIFIC OIL LANDS COMPANY. The corporation has \$20,000.00 in cash assets which it wishes to divide among its stockholders, but under the laws of the State of California the Board of Directors cannot do so without the consent of all the stockholders of the corporation.

We herewith inclose you a written consent to be signed by you and immediately returned to us. The majority of the stockholders have already given their assent to this proposition, and when all of the stockholders have consented, the dividend will be declared and your proportion thereof will be at once forwarded to you. There will be other amounts [533—427] from time to time that can similarly be divided without injuring the business of the corporation.

Please attend to this matter promptly.

Very respectfully yours,

PACIFIC OIL LANDS COMPANY.

By F. E. HARRISON,

Secretary."

Yes, after that I received some money. I received a check for \$20.00. This check dated January 8, 1914, No. 1181, on the Bank of California, is the one and bears my endorsement. A letter accompanied that check which I now produce. (Said letter, Plaintiff's Exhibit 68, offered and read in evidence, and is as follows:)

(Deposition of C. Rupert Walker.)

Plaintiff's Exhibit No. 68.

"PACIFIC OIL LANDS CO.

748, 749, 750 Mills Building,
San Francisco.

Telephone Sutter 471.

E. A. Hoeppner, President.

L. B. McMurtry, Vice-President.

F. E. Harrison, Sec'y and Treas.

January 8, 1914.

Dear Sir:

Inclosed you will please find dividend check for \$20.00, the same representing your pro rata of the first distribution to the stockholders of the company of cash assets amounting to \$20,000, and to which distribution we hold your written consent.

Accompanying this letter you will also find a statement covering the affairs of the company. This also, we feel sure, will prove of great interest to every stockholder.

Wishing you a very happy and prosperous 1914, we beg to remain,

Very truly yours,

PACIFIC OIL LANDS COMPANY.

By F. E. HARRISON,

Secretary."

Yes, another paper accompanied this letter and dividend check, which I now produce. Yes, this paper headed "Pacific Oil Lands Company, First Report to Stockholders," is the one received with this dividend check. (Said report, Plaintiff's Exhibit 69, offered in evidence, and is similar to Plain-

(Deposition of C. Rupert Walker.)

tiff's Exhibit 35. The envelope in which these papers, Plaintiff's Exhibits 67, 68 and 69, were received, offered in evidence as Plaintiff's Exhibit 70, the same being postmarked San Francisco, December 4, 1913.) (Plaintiff's Exhibit 71, the same being an envelope in [534—428] which some communication from this company was received by witness, bearing postmark San Francisco, August 5, 1913, offered in evidence as Plaintiff's Exhibit 71.) After receiving this check for \$20 the next I recall was a month or two later, Mr. Thorn came to me and asked me, in fact, told me that the Government was going to sue for the land, and that if Mr. McMurtry had these certificates in San Francisco, it would save a lot of expense; that he wanted to see us get something out of it, and so he offered me \$250 for the stock, saying that the other boys in the office were selling; so I sold my certificate for 1,000 shares for \$250, which I received, I think, in cash. Yes, I had then read this report to the stockholders. No, I didn't know how many tracts of land had been located in my name nor the area located. I knew some of the stockholders of the Pacific Oil Lands Company. I knew those who received 1,000 shares. Don't remember that I knew that Thorn, McMurtry or Hoepfner were stockholders, and made no inquiry. No, after surrendering this certificate never received any money or thing of value in connection with this oil land transaction. No, don't remember having received anything at any time after signing

(Deposition of C. Rupert Walker.)

this power of attorney, or making any inquiry, verbally or by letter, of any person in regard to these transactions. No, spent no money in connection with the development of any oil lands located by McMurtry in my name, nor was I ever asked to.

Cross-examination.

Yes, I have been ill and am not feeling very well. Am thirty-one years of age. My duties at present are checking out goods and making out bills of lading, for which I receive twenty-five dollars. Am unmarried and live with my mother and sister. No, I own no property. No, prior to signing that power of attorney at the request of Thickers, I had never signed any legal documents that I [535—429] know of, and since that time have owned no corporation stock except Pacific Oil Lands Company. Yes, I assist my mother; am the sole support, I guess, although my sister is also working. Yes, in 1907 I was getting \$12 a week and contributing a good part of it to the support of the family. Yes, that has been the condition right along since then. No, I never had \$250 before I received this amount from Mr. Thorn. I put it in the bank in my mother's and my name. No, I had no bank account up to that time. Yes, I knew these other men whose names appear before mine on the power of attorney. Q. And when you put your name on here you then knew that the power of attorney had been signed by the people whose names preceded yours—their signatures?

(Deposition of C. Rupert Walker.)

A. I didn't know what the paper was, but I signed it as a favor to Mr. Thickens, and they signed above mine, and I thought the paper was all right. Don't remember that I read it. I signed it as a favor to Mr. Thickens. No, I was not a personal friend of Mr. Thickens. He was my employer. I knew of no special reason why he should ask me to do him a favor. I had full confidence in him. He asked me to do him a favor and sign that paper. That is his language as near as I can remember it. Cannot say that anybody ever had mentioned oil lands to me before that. The only thing I can remember is something regarding oil lands in the paper that I signed, that is all. I think I saw it in the paper. Something about oil lands and Mr. McMurtry, too; that is all I remember. Yes, I am not feeling very well; am not sleeping very well, and am doctoring. Yes, taking medicine. No, can't say that my condition is as bad as bordering on nervous prostration. When Mr. Thickens wrote me in August, 1910, I telephoned him. I don't remember just what was said, except that he wanted to see me. In the letter he said he had some welcome news, some money coming to me. No, he did not [536—430] tell me when I signed this power that there would probably be some more coming to me. He told me that some time in the office while I was with Nixon & Thickens. He told everybody that. Yes, I knew the boys, Mahr, Herbert Walker, Metz and those people. No, I wasn't greatly surprised when

(Deposition of C. Rupert Walker.)

he told me in the letter that there was some money coming to me. No, I didn't ask him when he told me that money was coming to me out of the transaction why there was money coming to me. Yes, when I signed the power of attorney he may have said something about McMurtry and about his going out to California locating oil lands. Don't remember his saying anything about giving the boys in the office a chance by giving McMurtry a power of attorney to locate oil lands to make some money. Yes, I have trouble trying to understand the questions, sometimes. (Witness excused until April 27, 1917.)

Cross-examination Continued—April 27, 1917.

Yes, I feel better. My head seems a little clearer. I don't remember just what was in the power of attorney. Didn't know at the time it was a power of attorney. Signed it for Mr. Thickens. No, I did not know what it was at that time. Q. When did you find out what was in it? A. When Mr. Mahr called me up on the phone, before he went to San Francisco, and I learned then it was a power of attorney. Yes, that was in 1916. At the time I signed it did not know what it was about. The only thing I remember was that I saw Mr. McMurtry's name, and something about land; that is all I know, that is all I can recall. No, I did not read it all. No, I did not know when I signed it that I gave Mr. McMurtry or anybody else a power of attorney to locate land in my name. Yes, I signed another paper for Thickens in 1910, when

(Deposition of C. Rupert Walker.)

I went into the office, I signed some papers. I have since found out it was a ratification. Don't remember reading the ratification. Cannot [537—431] recall what Thickens then said. He told me there would be some money coming to me for signing the paper for him. I don't remember anything else. Don't remember that he said where the money was to come from. Cannot remember whether or not Thickens read the ratification to me, or whether I did. Yes, I went to the notary's office with Thickens, and the notary probably took my acknowledgment. I remember signing the paper at the notary's office. (Plaintiff's Exhibit 63 handed to witness.) Yes, I have now read this ratification. Yes, I remember reading it the other day here. I now understand what this paper is. Q. Well, what is it? A. A ratification. Q. What does it ratify? A. The original power of attorney. Q. Anything else? A. And for Mr. McMurtry to sell land. Q. Does it ratify anything besides the original power of attorney, giving him authority to sell lands? A. It ratifies the former power of attorney. Q. Is that all you remember that it ratifies? A. All other contracts, does it say? Q. Yes, it speaks of contracts. When you went down into the notary's office, did Thickens tell you how much money was coming to you. A. No, sir. No, I don't remember that he said how much money was coming to me. It is not very clear. Yes, he did say there was some money coming to me. He may have said it was out of oil contracts that I was ratifying, but

(Deposition of C. Rupert Walker.)

I don't remember whether he did or not. Don't remember his saying when it was coming or how much. Don't remember that he said who was going to give me any money. I know it was in August that I went to his office, because that was in the letter that he sent me, asking me to call at the office, and saying that there was some important news that he wanted to tell me about, and that there was some money coming to me for signing a paper for him three years ago. Think I was then working for Devoe & Raynolds. Yes, when I got the [538—432] letter I recalled the paper that I had signed three years ago. Didn't recall the character of the paper or what it contained. Think Thickens told me one time that there might be some money coming to me for the favor. No, he didn't promise it at the time I signed the paper, and I didn't sign it because I expected him to pay me. Don't remember that he said I might get some money through locations that were made under the power of attorney. Yes, at the time I went to his office he may have said that McMurtry had disposed of some of the lands and that there had to be a ratification, and then there would be some money coming to all of the locators. No, asking this question does not call this to my mind. Yes, when Thickens came to see me and told me he had \$250 for me, I think he did say that it came from my interest in the oil lands from McMurtry. He said he brought the money in cash and I would sign the check and it would save me a trip to the

(Deposition of C. Rupert Walker.)

bank. Don't recall his saying that what was written on the back of the check was a matter of form. No, had had nothing to do with Thorn before that. Don't remember speaking to Thickers about it. Don't remember that I notified Thickers that I had received it. Q. Look here: don't you see, Mr. Walker, if you signed a paper only to do a favor for another man, and you got any money out of that paper, that it would belong to the other man? A. No, not in that sense. Mr. Thickers said I was to get some money. Q. Then in the very beginning Mr. Thickers said if you signed that paper, you might get something out of it? A. Not from the beginning. Q. Well, when did he say it? A. Some time in the office. No, he didn't say that any money they might get out of that would belong to L. B. McMurtry, or that any land that I might get out of it would, not that I remember. No, he didn't tell me at the time I signed the power or afterwards, that if I got anything out of [539—433] signing that paper, either land, money, stock, bonds, or dividends, it would belong to McMurtry, Thickers, Searls, Thorn, or anybody but myself. Did not understand why this statement was sent me or why they wanted my ratification. Yes, I now understand because I know it was locating in my name. I knew the money, this dividend check came from the Pacific Oil Lands Company. Q. Where did they get it, did you know at the time? A. No. That was in that statement. Q. What was in that

(Deposition of C. Rupert Walker.)

statement about it? A. That that was received from the Associated Oil Company, I think. Don't recall that I received any information that any of the land was being transferred to anybody other than the Associated Oil Company. Yes, I guess my mind and health were in better condition when I signed the power of attorney and ratification than now, and my memory better than it is to-day or was last week. Yes, I generally read over all papers I sign, but this power of attorney was not explained to me and I just saw enough to know that it was about lands and had McMurtry's name in it. Have been away from my office duties for about two weeks. It will be two weeks on Monday. My duties consist of checking goods out and making bills of lading. Have not been feeling well, this investigation has made me feel bad. Have been suffering in the back of my neck and head and the doctor said I should take a rest. I have been trying to recall these matters, but have not been able to recall the exact details. [540—434]

Deposition of William A. Keenan, for Plaintiff.

WILLIAM A. KEENAN, called April 25, 1917, by plaintiff, testified by deposition as follows:

Am a woolen salesman, and reside at 2405 Grand Avenue, New York City. Was born in New York State and have never lived in any of the western states. No, prior to December, 1907, never acquired title to any public lands, nor was I familiar with the public land law, but knew that it was

(Deposition of William A. Keenan.)

possible for an American citizen to locate lands. In December, 1907, was working for Nixon & Thickens, as sample clerk. Never had been interested in any corporation or association engaged in the production or development of oil, or mines, or mineral. Q. The records of Kern County, California, disclose that on December 19, 1907, W. A. Keenan and a number of other persons, executed before George F. Handel, a Commissioner of Deeds of the City of New York (substance of Plaintiff's Exhibit 4 stated). Are you the W. A. Keenan whose name appears on that instrument? A. Yes, sir. Signed it in the office of Nixon & Thickens, at 79 Fifth Avenue. Had then been in the employ of Nixon & Thickens since about January, 1905, and knew John B. Thickens, of the firm. Was not acquainted with L. B. McMurtry, C. W. Thorn, F. H. Searls, or F. E. Harrison. Believe I had seen McMurtry around the office, once. Thickens presented this paper to me. Had no talk with him before about oil matters. To the best of my understanding, no one else was present but Thickens and myself. Thickens asked if I was twenty-one years of age and I told him I was, and he said I want you to give me your power of attorney, and I want Mr. McMurtry to locate oil lands for us in California. Q. And by "us" whom did he mean, if you know? A. There were at that time at least three or four signatures on the paper, at the time I signed it. I then knew Herbert M. Walker, F. H. Romaine, Jr., C. Rupert Walker, [541—435]

(Deposition of William A. Keenan.)

Eugene Metz, William Mahr, and H. E. Bashore, but not R. B. Welch. At that time I don't think there was any further conversation than he mentioned about the power of attorney, and said it would prove of value to us in the future. No, I did not then read the power of attorney and had no talk with Thickens or any other person in regard to these oil land matters or giving my power of attorney to McMurtry, other than I knew this power of attorney was going around the office, and it was for McMurtry to locate oil lands in California for the people who signed the power of attorney, and I was afraid Mr. Thickens was going to leave me out of it, and if he had not asked me, I would have asked him to let me in on it. Prior to that I had never had any direct conversation with Mr. Thickens on the matter at all. I had heard Mr. McMurtry's name expressed and had overheard other conversation around the office regarding Mr. McMurtry and his oil lands. Yes, I had heard about the Empire Oil & Development Company, but had no stock in it. Q. Who had you heard talk about this matter around the office? A. Why, I don't know as I could tell just at this time who the particular people were. I was a young man around the office all the time, and without eavesdropping I was the recipient of a whole lot of conversation, and I understood there were several men in the office who had—that is, outside of Mr. Thickens—that had invested money in an oil company that Mr. McMurtry had, and I believe they called it the Empire. No,

(Deposition of William A. Keenan.)

heard no more about this for the next month or so, or for the next year, until 1910. Nixon & Thickers dissolved, I believe, in May, 1908. Don't recall that I heard any conversation about this power up to that time, nor did I seek any information from Thickers about oil lands, nor received any information from any source that I can remember. In 1910, say probably about August, I was employed with another firm in [542—436] the Knickerbocker Building, Lindsley, Hanf & Company. Thickers came in to see me and asked me if I recalled the power of attorney that I had given to Mr. McMurtry to locate oil lands in California, at some time previous, and I told him yes, and he said there is some money coming to you, and it is necessary for you, it is necessary to have you ratify that power of attorney, so he took me out to a notary, who is in the same building, whose name is Louis C. Goetting, and on the way to the notary's office I asked Mr. Thickers what had happened, and he told me that Mr. McMurtry had succeeded in locating oil lands and some of the oil lands had been sold and there was a payment of \$250 coming to me, which was the beginning, and there would be more payments from time to time.

(Plaintiff's Exhibit 72, same being photographic copy of ratification dated August 20, 1910, shown witness.) That is a copy of my signature. Yes, I read it before signing, but don't know that I gave the language special attention and made no inquiry of Thickers or anybody else about the contract of

(Deposition of William A. Keenan.)

August 4, 1910, with Herrin and others, mentioned, and was not then advised. Did not know how many locations had been made under my power of attorney and made no inquiry as to that or the extent or area of lands located by McMurtry under such power. What I have stated is all I can recall of the conversation between myself and Thickens at the time I executed this ratification. About a year later C. W. Thorn called to see me. He introduced himself as an agent of Mr. McMurtry's, and he said I probably knew what he was there for, which was to pay me \$250, which had been coming to me. Between the time I signed the ratification and the time Thorn came to see me I had probably called Thickens over the telephone maybe half a dozen times and inquired about this matter. I inquired what had happened, that some of the locators, the fellows that I knew, had received [543—437] their money and I had not, and Mr. Thickens explained that one of the locators had died and I could not receive my money until his will had been probated. At this visit Mr. Thorn produced a check and said it would probably be more convenient to me if he would pay me the money and rather than save me the inconvenience of going to the bank to cash the check, that he would cash the check for me with my endorsement. I endorsed the check and he gave me the cash.

Q. I invite your attention to the check, which is as follows:

(Deposition of William A. Keenan.)

“No. 165. New York, September 11th, 1911.
Second National Bank of the City of New York.
Pay to the order of W. A. Keenan, Two Hundred and fifty dollars. (Signed) F. H. Searls.”

On the reverse side thereof I find the following in typewriting:

“Received from L. B. McMurtry, \$250, in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907.”

Now, just below that is the signature of W. A. Keenan. Is that your signature (showing witness)? A. Yes, sir. I had that check in my hand just long enough to endorse it. Do not know whether or not the typewriting was on there when I signed it. I did not read it. Never read it before to-day. There was no other conversation. I knew a year previous that I was to receive \$250. No, did not then know what particular lands had been disposed of and this money raised from; made no inquiry; nor how many locations had been made. Knew the locations were to be made in California, but did not know the particular county or oil district and made no inquiry. Retained this \$250. Did not buy stock with it. A month or two after this I got a telephone call to meet McMurtry at the Waldorf-Astoria Hotel. Don't know who telephoned me. Was not advised what was wanted.

(Deposition of William A. Keenan.)

Had then never met McMurtry [544—438] or Searls. At the hotel met McMurtry and Thorn, and before I left F. H. Romaine, Jr., and Mr. Farrell came in. The only conversation was McMurtry's talk in general to all of us. When I got there Mr. McMurtry had some certificates of stock and he started to talk about locating oil lands and what trouble he had to hold them, and he gave us each a certificate and said that that represented, I believe it was, the Pacific Oil Lands Company. Said the Pacific Oil Lands Company was formed to take care of the original locators, and that the stock, the land held by that company represented the best that had been located, and the stock at that time was supposed to be worth about a dollar a share, that is the face value of it, but that it was worth double its face value at that time, and for us to put that certificate of stock away and forget about it, as it was valuable, and that at any time we cared to dispose of it or sell it, to get in communication with him. That is all I recall, other than he had quite a lengthy conversation about the locating of the lands, and how he had to care for them, and a lot of conversation along that line; I don't just remember. (Attention of witness called to certificate No. 14, for 1,000 shares of stock of the Pacific Oil Lands Company, together with receipt for same, dated September 15, 1911.) Don't just recall signing that, but that is my signature. I put this certificate away and forgot about it. Was there not more than about ten minutes. Did not then know how

(Deposition of William A. Keenan.)

many locations had been made under my power or what the assets or resources of this company were, or the area of the land located, or the state of development of the lands located. Yes, if I am not mistaken, I think McMurtry said something about oil having been discovered on the lands. No, I made no inquiry at this meeting with McMurtry about the questions just asked, nor had I inquired of any [545—439] person before that. The next transaction, I believe, was about a year later, in 1912, when I got a letter stating that there was to be a meeting of the Pacific Oil Lands Company in San Francisco. William Penn Humphries of San Francisco has the letter. No, at that meeting with McMurtry at the Waldorf-Astoria, I did not know who the stockholders of the Pacific Oil Lands Company were, or whether or not McMurtry held any stock. Believe the name E. A. Hoeppner appeared on the letterhead that I received as one of the directors. No, I did not know at the time I met McMurtry at the Waldorf-Astoria that Hoeppner was a stockholder, or that McMurtry was. Did not then know F. E. Harrison and made no inquiry whether or not he was a stockholder, or whether F. H. Searls was; didn't know him. Yes, Humphries is my attorney. No, between the time I met McMurtry in September, 1911, and the time I received this letter in 1912, I made no inquiry of any person with reference to these oil land matters. May have met Thickens, but not Thorn. Made no inquiry of Thickens during that time about the affairs of the

(Deposition of William A. Keenan.)

company. I figured on Mr. Thickens as my boss, employer, and I had most implicit confidence in him, according to my best understanding, Mr. Thickens had been associated with Mr. McMurtry in the oil development business, and I never paid any further attention. About a year later I received another notice of meeting, which Mr. Humphries has. (Plaintiff's Exhibit 40, being a letter dated August 4, 1913, shown witness.) Yes, that is similar to the letter I received in August, 1913. (Plaintiff's Exhibit 73, being proxy, dated August 12, 1913, shown witness.) Yes, that paper bears my signature. Believe Thorn brought that in. I had forgot it and don't recall any conversation about it at that time. Did not see Searls, McMurtry or Harrison during August, 1913. I next received a letter enclosing consent to distribute [546—440] dividends (Plaintiff's Exhibit 74, being consent dated December 9, 1913, shown witness). Yes, that is the consent that I signed.

(Plaintiff's Exhibit 73 offered and read in evidence, and is as follows:)

(This is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman and purports to have been executed by William A. Keenan, August 12, 1913.)

(Plaintiff's Exhibit 74 offered and read in evidence, and is as follows:)

(This is a consent to dividend similar in form to Plaintiff's Exhibit 6 with the deposition of Frank

(Deposition of William A. Keenan.)

B. Chapman and purports to have been signed December 9, 1913.)

(Plaintiff's Exhibit 32, letter dated December 3, 1913, shown witness.) Yes, I believe I received a similar letter. Yes, I signed this consent to the distribution of dividends and returned it to San Francisco. No, then made no inquiry as to the assets or resources of the company, or the number of locations or area of land located under the power of attorney; nor did I have any advice on these subjects, or who the stockholders of the company were. I next received a check for \$20. This check No. 1180, dated January 8, 1914, on the Bank of California, for \$20, is the check and bears my endorsement. If I received a letter with that I turned it over to my attorney, Mr. Humphries. Yes, I received a letter similar to this letter dated January 8, 1914 (Plaintiff's Exhibit 34). Yes, I received with the dividend check a report of the condition of the company, which Mr. Humphries has. To the best of my knowledge it was similar to Plaintiff's Exhibit 35. When I received that report we thought that maybe this thing was going to turn out to be a big proposition for us. By "us" I mean myself and the locators that I came across at different times. For instance, Mahr, Metz, Walter Wilson, and J. E. Farrell. No, I made no further inquiry as to the affairs of the company. Since 1908 we locators [547—441] have been separated and with different firms, and would meet only occasionally. The next occurrence that I recall was in the

(Deposition of William A. Keenan.)

spring of 1914, in response to a telephone call, I believe from Metz. I met Searls in some office there in the building, Porter & Wilson, I believe. Searls was already there and said he had already had a conversation with the boys and that they had decided to do what he had advised. And he said he would give me a general idea. He said the affairs of the Pacific Oil Lands Company were in very bad shape; that they were practically financially embarrassed, and that the Government was suing to take the land back and to protect us as locators, why, Mr. McMurtry wanted us to turn our stock over to him for which he would pay \$250, and Mr. Searls said everybody else had agreed to do it on account of conditions and he would rather have us get something out of it than nothing, so I agreed to do as the others had done. No, Searls did not give me \$250. I didn't have the stock with me. I surrendered it to C. W. Thorn probably a day afterwards and he gave me \$250, and I signed the certificate. The date on the assignment shown me, March 18, 1914, is about the date. Mr. Thorn called to see me in the office of Patterson & Greenough, and he said that while Mr. McMurtry had offered to pay us \$250 for our certificate of stock, that he could ill afford to do so on account of his financial condition, and Mr. Thorn wanted me to exchange my certificate of stock in the Pacific Oil Lands Company for stock in the Columbus Midway Company—I believe that was the name of it—and he said he was personally interested in that company,

(Deposition of William A. Keenan.)

and that it was a good business proposition, and he would leave it to my consideration and call again in a day or two. When he called again I decided not to take the Columbus Midway stock and accepted the \$250. At that time the only thing I knew as to the [548—442] number of locations or acreage was that given in the report. Made no inquiry to ascertain how many locations had been made in my name. I don't know where I got the impression, but it was the understanding that each of us locators I believe had located something like 160 acres, I understood in the southern part of California. The only stockholders that I knew of were the locators that I knew personally. Yes, I believe they brought that to my attention before, if I am not mistaken; at the time of Mr. McMurtry's conversation he referred to Mr. Hoeppner as Major Hoeppner, and if I remember rightly, he mentioned him at that time as being a stockholder. No, at the time I surrendered my certificate, didn't know how many shares Hoeppner owned, and made no inquiry; nor did I then know how many shares McMurtry owned, or make any inquiry. No, at the time I surrendered my stock, I made no inquiry to ascertain what had been done under this contract of 1910, mentioned in the report. Never had received any other money after surrendering my stock on account of these locations made by McMurtry in my name. No, never spent any money for the purpose of holding or developing those lands so located. I never was asked to. Yes, was in San Francisco in November, 1916. Was not called on to testify.

(Deposition of William A. Keenan.)

Cross-examination.

No, in the conversation with Thickens at the time I signed the power, he said nothing about my name being used by McMurtry to locate land for himself or McMurtry, nor was there any intimation that Thickens or McMurtry or anybody in the interest of McMurtry or Thickens or anybody else that they wanted to use my name for their benefit in making the location of oil lands. Nor did I hear any statement by Thickens to any of the boys in the office to that effect. No, it was not my intention before or after executing [549—443] this power that it should be used for the purpose of locating lands for the benefit of McMurtry or Thickens, which benefits were to come out of the lands located in my name, nor was it my intention that this power should be used for any illegitimate purpose or for defrauding the Government. No, I never repudiated or modified, or undertook to set aside this power of attorney. Yes, I believe in this conversation with McMurtry, Major Hoepfner's name was mentioned in connection with these locations, but in just what way I cannot recall. [550—444] Yes, at the time I received the stock I understood that on some of these locations oil had been discovered.

Q. Didn't he also tell you at that time and those other gentlemen in your presence that the money that had been expended in taking care of those lands and paying for help, for these hardships, etc., who were mentioned, in order to save the locators from going down in their pockets and in order to

(Deposition of William A. Keenan.)

finance them, that this corporation was organized and all those people had been or were going to be paid in the stock of the corporation? A. Yes, sir.

Yes, at the time I signed the ratification I had read the report as to the sale of some of those lands or contracts of sale with some of those people, and knew that I was confirming the contracts. Yes, I understood that the reports showed the acreage located. No, at the time Searls suggested to me that the lands were involved in litigation he did not say to me that I could keep my stock and take a chance on it or take \$250 and make a sure thing of it. As I understood it, the only way to protect the interest involved would be to turn it over to him so that he could make a fight on it.

Redirect Examination.

Yes, I stated that I considered this stock that I received in the Pacific Oil Lands Company as my own and that no one else was interested in it. The impression that I received at that time was that only part of the lands up to that time had been developed, or was in the process of development, and that the best lands were being held by the Pacific Company.

Q. Was it your understanding that there were other lands upon which you had been located, and which you had, or rather which had not been transferred to the Pacific Oil Lands Co.? [551—445]
A. At that time, why, I could not give any positive answer regarding it. If I have your question correctly. May I answer that question again after

(Deposition of William A. Keenan.)

I hear the question? (Question re-read.) A. You mean at the time I received my stock? Q. Yes. A. Why, I had nothing to show that there were any other lands at that time that had been located. You asked me at the time I got the certificate of stock, if I thought there were other lands which had not been located, that were not included in the Pacific Oil Lands Company. Q. Yes. A. My understanding at that time was that there were other lands. Q. Did you have that same understanding at the time that you surrendered your certificate in the Pacific Oil Lands Co.? A. No. Q. Did you at the time you surrendered your certificate in the Pacific Oil Lands Company, think that all the lands upon which you had been located had been transferred to the Pacific Oil Lands Company? A. Why, I cannot answer that question. No, I did not have any advice on the question. Q. Did you treat this certificate of stock in the Pacific Oil Lands Company as representing all of your interest in that company, in the lands which had been transferred to it. A. No.

No, there was no understanding that I would be called on for money for the purpose of holding or developing lands located in my name. [552—446]

Deposition of Herbert M. Walker, for Plaintiff.

HERBERT M. WALKER, called on behalf of plaintiff April 25, 1917, testified by deposition as follows:

Am vice-president and sales manager of Nixon,

(Deposition of Herbert M. Walker.)

Walker, & Tracy, Incorporated, and reside at No. 10 Wachung Avenue, Montclair, New Jersey. Was born in New Jersey and never resided west of the Mississippi. Never resided or traveled west of the Mississippi. In December, 1907, was a salesman for Nixon & Thickers and prior to that was not familiar with the United States Land Laws. Never had been interested in any corporation or business engaged in the development or production of oil or minerals. Did not know the rights of a citizen with respect to the public domain.

Q. The records of Kern County, California, disclose that on December 19, 1907, Herbert M. Walker and other persons executed a power of attorney (substance of Plaintiff's Exhibit No. 4 stated). Are you the Herbert M. Walker whose name appears therein?

A. I am Herbert M. Walker. I am the Herbert M. Walker who gave Mr. McMurtry the power of attorney to locate oil and mineral land.

Don't just remember whether I signed that instrument at our office or the office of James, Schell & Elkus. That is the law firm with which Mr. Handel is connected. Don't remember appearing before Handel, but I must have if I acknowledged it or if he acknowledged me to it. That is a long time ago. It was probably Mr. Thickers who presented it to me, but I cannot remember just little details that far back. I was connected at that time with Nixon & Thickers, in the capacity of salesman, and Thickers knew this McMurtry and at that time I believe McMurtry was interested in some oil company that he

(Deposition of Herbert M. Walker.)

wanted to sell shares for; that was prior to December, and Thickens wanted [553—447] me to buy some shares of stock in that oil company, and at that time I didn't have any money to put in oil stocks. I didn't buy any, and a little later Thickens came along and he said he had a friend by the name of McMurtry who was well up on oil lands and that he believed if he would give me the power of attorney to locate oil lands for us, it would prove valuable, and therefore I gave him the power of attorney. Cannot say whether or not he mentioned this before he actually asked me to sign it. I know he was very much interested in this other oil company that they were trying to sell stock for. That is all I can recall of what was said. Heard nothing further about it.

Q. Was the matter mentioned among you boys in the office there? A. I guess probaby it might have been mentioned at some time that we might hear something from it, and maybe we would not, but whether we were given to understand by Thickens—at the time, as I say, that it would probably be, if he located property that had oil on it, it would probably prove valuable, and I don't remember whether we talked about it, or whether it skipped our mind or not, I probably—well, as I say, I don't remember if he said anything further about it.

The next thing that I remember anything distinctly about is when McMurtry came in and wanted us to give him a ratification of our power of attorney. That was about three years later. (Plaintiff's Exhibit No. 75 shown witness.) Well, I remember now

(Deposition of Herbert M. Walker.)

as I read this that Mr. McMurtry wanted me to give him this ratification of the power of attorney, that before I would do it I consulted a lawyer on it, and he read it over, and he advised the word "lawfully" be inserted there, which I [554—448] notice has been done. Yes, it is between the words "acts" and "made" in the next to the last line. At that time Mr. McMurtry said that he had located property out there and he had very little money, and that in order to take and develop this property further, the way it should be, he would have to take and dispose of part of it in order to work the rest of it, and I therefore took and was given to understand by him at that time that unless he could take and dispose of part of it, that we, that is, the locators, would take and lose probably all of it. Therefore we took and gave him the ratification in order to try and hold what we had. He was in our office a number of times before I gave him that ratification. Think Thickens was probably around. I don't remember that McMurtry said how many oil locations had been made under my power "only I was given to understand by him that he had located a certain tract in my name. How much property it was, I cannot exactly at this time say," or how many tracts he had located in my name or the area. No, I made no inquiry of him on these subjects. Yes, I observed the mention in that ratification of these contracts. No, that did not attract my attention at the time and I made no inquiry of McMurtry about the contract of August 4, 1910. No, did not know what lands were affected by

(Deposition of Herbert M. Walker.)

it. The only way I took this was Mr. McMurtry's word for it, that he has to take and sell part of the lands in order to raise money and develop and hold the rest. No, I did not ask McMurtry specifically about this contract of August 4, 1910. I was given to understand by Mr. McMurtry that, unless we would give him this ratification that he would take and probably lose all the property that he had located for us. No, McMurtry [555—449] did not ask me to advance any money for the development or holding of these lands. Yes, I was promised a little money for signing this ratification—was promised \$250, that would be my share of the proceeds that would come from selling this part of it. I understood the proceeds from selling this part of the land would be used to develop the rest of the property. Yes, I understood that this \$250 was to be paid me and part use in developing the other lands. I certainly thought that the \$250 was about all that was coming to me for my share, from what he had sold. Yes, I understood McMurtry to say that. The next thing was about a year later. McMurtry came east and gave me 1,000 shares of stock in the Pacific Oil Lands Company. Yes, shortly after signing this ratification I received \$250. Thickens paid it to me. He said he had received from Mr. McMurtry the \$250 and if we would go with him to the Second National Bank that we would get the cash, and therefore I went up there and while I was there I met a man by the name of Thorn, also a man named Searls. Had never seen Searls before. Think Thorn had

(Deposition of Herbert M. Walker.)

been in the store. When I say "we," I mean four or five boys there in the office. We all come up together, as near as I can recall, Mahr, Wilson, Metz and myself, we came and met Thickens there. He introduced me to Searls and said, "This is Mr. Searls," and he said, "He is going to give you the money," and Searls said, "All right, boys, I am going to give you the money; come right over here to the paying teller's window and endorse the check, and he will give you the money for it." and as near as I can remember, we lined up to the paying teller's window and endorsed the check, and \$250 was handed over to us.

Q. I invite your attention to check No. 116, which is [556—450] dated New York, September 26, 1910, on the Second National Bank of the City of New York, and is made payable to the order of Herbert M. Walker for \$250, and is signed F. H. Searls. On the reverse side of that check I find the following in typewriting: "Received from L. B. McMurtry, \$250, in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907." And underneath that is your signature, "Herbert M. Walker." Is that your signature (showing witness)? A. My signature. I imagine that is the check I signed, otherwise it would not have my signature on it; I don't remember of seeing this typewriting matter on this

(Deposition of Herbert M. Walker.)

check at the time when I signed it. Don't remember anything being on there at the time, and reading this typewriting does not refresh my memory as to having signed it at the time. If it was there I did not see it. If I had seen it I never would have endorsed the check to get \$250, that is sure. Cannot say that the check was concealed from me at the time. I remember great haste was shown by M. Searls to get me to endorse this check, for the reason that he said he was in a great hurry and he must get this thing settled up and get right back to California. Made no inquiry of Searls as to the source of this \$250 for the reason that I had confidence in Thickens and believed that he was working in my interest as well as the other locators' interests, just as much as though he would be for anybody's interest where they were employed by him. Made no inquiry of Thickens as to the source of this money. Took it for granted that it came from McMurtry, as McMurtry had said that would be my share of the proceeds so far. [557—451] Made no inquiry to ascertain what proportion of the proceeds this \$250 was. Made no inquiry of either Searls or Thickens as to what disposition had been made of the lands which had been located. Yes, I retained this money myself. The next thing that I recall was when McMurtry came on again and gave me 1,000 shares of stock in the Pacific Oil Lands Company. He came to our office one day and said "Here is 1,000 shares of stock for you; that is part of your proceeds from the oil lands." I remember very distinctly Mr. McMurtry saying, "Under no circum-

(Deposition of Herbert M. Walker.)

stances sell or dispose of this stock; that it is going to be very valuable to you." I remember that very distinctly.

(Plaintiff's Exhibit No. 75 offered in evidence and is as follows:)

(This is a ratification similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman and purports to have been executed by Herbert M. Walker, September 2, 1910.)

Certificate No. 10 of the Pacific Oil Lands Company, shown me, bears my signature on the assignment. The signature on the receipt for the certificate dated September 14, 1911, looks like mine, but I don't remember ever signing it. That is my signature, however. No, at the time I received this stock from McMurtry I made no inquiries as to the assets or resources of the Pacific Company, or the number of locations made in my name, but I understood that he located property for each one of the thirty-one locators. Don't think I knew how many acres he had located for each one and had no one making inquiry of him on that subject. No, did not then know how many shares of stock, if any, McMurtry owned in this company, and I made no inquiry on that subject and had no one else do so. Yes, I then knew the state development of the lands. I believe they had [558—452] done the necessary work to do what development had to be done in order to comply with the laws of the United States. McMurtry probably told me that. No, he did not tell me specifically what happened. Don't think he then told me that oil had

(Deposition of Herbert M. Walker.)

been discovered and I did not then know what had been done under this contract of August 4, 1910 with Herrin and others and I made no inquiry as to what had become of that contract or what had been done under it. No, I did not then know of the contract which had been made subsequently supplemental to that of August 4, 1910. The next thing was the receipt of a notice of a meeting of the Board of Directors. No, between the time I received the stock of McMurtry and the receipt of this notice of directors and stockholders' meeting in 1912, I sought no advice about any of these oil lands or their condition. I was very foolish. If I had been wise I would have known a great deal more about this thing in 1910 than I have learned since, for it just so happens that I have relatives with the Standard Oil Company out there in Oakland, and if I had been wise as I am now, Mr. McMurtry would not have gotten the ratification of the power of attorney. I will say that, for I should have found out about him and more than what Mr. McMurtry told me and I believe now he was not telling me the truth, and I don't think that Thickens told me the truth. After receiving this notice of stockholder's meeting in 1912, I didn't hear anything further for sometime, then I believe I got another notice of stockholders' meeting and a little later a proxy to sign and send back which I did, and then I received a dividend of \$20. I have none of these papers.

(Plaintiff's Exhibit No. 40 shown witness.)

As near as I can remember that is one of the forms I received. [559—453]

(Deposition of Herbert M. Walker.)

(Plaintiff's Exhibit No. 76, being a proxy, dated August 12, 1913, shown witness.) I think that is the one I signed. It came to me by mail. (Said Exhibit No. 76 offered in evidence and is as follows:)

(This is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman.)

(Plaintiff's Exhibit No. 77 shown witness, the same being dated December 9, 1913, and is as follows:)

(This is a consent to dividend similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman.)

That is my signature and I undoubtedly signed it. Cannot say how it reached me.

(Plaintiff's Exhibit No. 32 shown witness.)

Don't remember of receiving a letter similar to that paper, Plaintiff's Exhibit No. 32, with the paper marked Plaintiff's Exhibit No. 77, but I undoubtedly did, for the reason that this is my signature.

Q. I invite your attention now to a check which, in substance, is as follows:

"No. 1177. San Francisco, 1/8/14. The Bank of California, National Asociation, San Francisco. Pay to the order of Herbert M. Walker, Twenty dollars. (Signed) Pacific Oil Lands Co., F. E. Harrison,—Secy-Treas. L. B. McMurtry, Vice-Pres."

Endorsed on the back and near the top edge is, "For deposit in Glen Ridge Trust Company.

(Deposition of Herbert M. Walker.)

Herbert M. Walker." Is that your signature (showing witness)? A. Yes, sir, that is my signature. [560—454]

(Plaintiff's Exhibit No. 34 shown witness.)

Don't recall receiving a similar letter; probably did, though, and destroyed it.

(Plaintiff's Exhibit No. 35 shown witness.)

Don't remember receiving a report like that Exhibit No. 35. If they sent me one I undoubtedly got it. Don't remember ever reading such a statement After receiving this dividend check, the next that I recall, as near as I can remember, then some time later—just how long I don't remember now—this Mr. Searls that I met at the bank came on and said that he represented Mr. McMurtry and that Mr. McMurtry had sent him on to take and buy back our oil stock in the Pacific Oil Lands Company and he asked me to let him have mine and he would give me \$250.00. I told him that I didn't care to dispose of my stock, for the reason that when Mr. McMurtry gave it to me in payment of some oil lands that we had located, he said to hold on to the stock, that it would prove very valuable indeed, and not to dispose of it.

I told Mr. Searls that I would rather have the dividends come along the same as I got one, as I would to sell the oil stock. Mr. Searls said that Mr. McMurtry must have the stock for the reason that the United States Government was going to bring suit against him to recover the oil lands that he had located for me, and that the reason Mr. Mc-

(Deposition of Herbert M. Walker.)

Murtry wanted this stock, as near as I can remember it, was so that he could better defend the suit of the Government as he would then have all the stock in his possession, and, having confidence in Mr. McMurtry doing the right thing by me, I therefore let Searls have this stock for \$250, but if I had not had confidence in Mr. McMurtry as well as Mr. Thickens, I would not have given his \$1,000 worth [561—455] of stock that had started to pay \$20, for \$250.

I turned this certificate over to Searls. The assignment dated March 18, 1914, on this certificate, bears my signature. I received \$250 when I surrendered it to him. No, at the time I surrendered this certificate did not know what the assets or resources of the company were. If I had had any idea I would never have surrendered. I thought by surrendering I was doing the best thing for myself on account of believing in Mr. McMurtry and trusting in what he said was so, and when he said that he could better defend the suit that the Government was going to bring to get the lands he had located back for me, it looked reasonable and therefore I let Searls have the stock for McMurtry. Then made no inquiry as to the assets or resources of the company or as to who the stockholders were. Yes, I knew before that how many locations had been made in my name, or I thought I did. Thought he had made thirty-two locations and one of them for me. Did not know exactly the area of land located for me or its state of develop-

(Deposition of Herbert M. Walker.)

ment, only that I understood that the necessary work had been done to comply with the law.

Q. At that time you had received this first report to stockholders, I believe? A. Yes, sir. Q. In reading the report over, as you said you did, did you notice the fact that they had entered into a contract in August, 1910, with the Associated Oil Company? A. Yes, I noticed it.

No, at the time I surrendered this certificate to Searls did not inquire of his as to what had been done under that contract, for the reason, that subject was not considered, for the reason that I believed by keeping the stock and getting dividends at the rate of \$20 per month that I thought I would get, was the reason I didn't want to give it up, and the only [562—456] reason I did give it up was, as I stated, so as to have Mr. McMurtry better defend the suit. No, did not then make any inquiry as to whether McMurtry was a stockholder in the company, but I presumed that he was. Did not know how many shares he owned. Did not then know that Major Hoeppepner was a stockholder. After surrendering this certificate received nothing else out of this Pacific Oil Lands Company. Never owned any stock in this company, except that reported by this certificate No. 10. No, since surrendering this certificate have received nothing on account of the fact that my name was used in locations under the power of attorney by McMurtry, but I hope by the time we get through with Mr. McMurtry in the suit we are bringing against him we

(Deposition of Herbert M. Walker.)

will get our just share. No, I never had any money for the development or holding of any of these lands located in my name, nor was I ever asked to. Yes, I knew H. E. Bashore. He was employed at Nixon & Thickens when I was. Yes, I had some correspondence with him in the fall of 1916.

Q. I now hand you seven letters and a telegram, the first of which is dated September 29th, 1916; the second October 2d, 1916; the third letter October 30th, 1916; the telegram dated October 30th, 1916; the next letter dated November 2d, 1916; the next letter dated November 3d, 1916; the next letter dated November 6th, 1916; and the next letter dated November 13th, 1916. Will you please examine those and tell me whether or not each and every one of those letters are the letters you wrote on those dates to H. E. Bashore, of Harrisburg, Pennsylvania? A. May I ask where you got the letters from? Q. Yes. In reply thereto, I advise you that these letters were produced by H. E. Bashore, in San Francisco, California, at the time he was a witness on behalf of the Government in the trial of Cause [563—457] A-38, the United States vs. Thirty-Two Oil Company and others, which was then on trial before Robert S. Bean, United States District Judge. The letters were thereupon impounded with the Clerk of the Court at the request of myself as counsel for the Government. A. They all look like my letters to Bashore.

Q. I also invite your attention, Mr. Walker, to a number of letters which appear upon the stationery

(Deposition of Herbert M. Walker.)

of the Harrisburg Automobile Company, one dated October 1st, 1916, signed "Bashore," one dated October 29th, 1916, signed "H. E. Bashore"; one dated October 31, 1916, signed "H. E. Bashore"; one dated November 2d, 1916, signed "H. E. Bashore"; one dated November 4th, 1916, signed "H. E. Bashore"; one dated November 4th, 1916, signed "Bashore," and one dated November 8th, 1916, signed "H. E. B." A. These are the originals, are they not? Q. I am going to ask you if they are the original letters which you received from Mr. Bashore? A. They appear to me to be such, as I believe I gave them to Mr. Mahr to take West, when he went out there in November. Q. Will [564—458] you please examine the letters, the one from yourself to Bashore, dated September 29th, is it not? A. Yes, sir. Q. 1916, and the one from Bashore to you, dated October 1st, 1916, and tell me, if you can, who it was wrote the first of these letters in this line of correspondence? A. Well, I had just as soon answer the question, if the Government wants it. Q. Yes, I would like the answer. A. It appears to me that I wrote the first letter on the subject because I was not sure the letter would reach him, and therefore I sent a copy of the letter to Duncannon, Pennsylvania. Q. Where were you employed about April 23d or 24th, 1914? A. In 1914 I was a member of the firm of Nixon, Walker & Tracy.

Mr. HALL.—I would like to, at this point, read in the record Government's Exhibit No. 77, which is

(Deposition of Herbert M. Walker.)

the consent signed by the witness, Herbert M. Walker.

(Said Exhibit No. 77 read into evidence, the same being similar in form to Plaintiff's Exhibit No. 6, dated December 9, 1913, and signed Herbert M. Walker.)

Yes, I have a faint recollection of some Government agent coming to my office about the 23d or 24th of April, 1914, but I don't know whether I spoke to him or whether he spoke to me.

Q. To refresh your recollection, didn't Mr. Williamson call on you, either on April 23d or April 24th, 1914, and did you not have a conversation with him, at which was Mr. Wilson, Mr. Mahr, Mr. Metz, Mr. Wilson and yourself? A. Do you want the question answered? Q. To refresh your recollection, didn't Mr. Williamson on the 23d or the 24th of April, 1914, in the office of Nixon, Walker & Tracy, ask you why [565—459] you signed this power of attorney, and did you not tell him that you signed it as a favor to Mr. Thickers, by whom you were employed at that time it was signed? A. No, I don't remember.

I don't remember his speaking to me on the subject. Q. Did you not in that same conversation state to Mr. Williamson that you had received the \$250 in 1910, and the \$20 dividend in 1914, and that the \$250 for the stock was just a short time prior to that conversation? A. No, I don't remember ever talking to Mr. Williamson on this subject at all. Q. Did you not say to him in that same

(Deposition of Herbert M. Walker.)

conversation and at that same time and place, that Mr. Searls was still in the city and that he might talk to Mr. Searls about the matter? A. My answer is the same. Q. Did you not tell Mr. Williamson at the same time and place and in the same conversation that you had received this money from Mr. McMurtry and that you were thoroughly satisfied with the transaction inasmuch as it was in the nature of a gift or a pickup? A. No. Q. Or a find, or words to that effect? A. No, I don't remember talking to Mr. Williamson at all on the subject, no recollection of it. Q. Is it not also true that at this time and place Mr. Williamson asked you to give him an affidavit in regard to the matter and that you declined and said that you would see Mr. Randall, an attorney, before giving any written statement? A. And I answer that I don't remember talking to Mr. Williamson [566—460] on this subject at all. Q. Is it not also a fact that you did see Mr. Randall within a very short time after the 23d or the 24th of April, 1914, and that within a day or so thereafter Mr. Williamson again called upon you at the same place and you declined to sign the affidavit? A. No, I don't remember any of this at all. Q. Will you say that this conversation that I have just been asking you about did not occur, or that you did not remember it? A. I say that I do not remember talking to Mr. Williamson about this, or talking to Mr. Randall about it, that I remember. Q. What is your best impression about this conversation, as to whether it did or did not occur? A. I

(Deposition of Herbert M. Walker.)

believe it did not occur. Mr. HALL.—That is all. I will now ask that the letters of Mr. Walker to Mr. Bashore and Mr. Bashore to Mr. Walker, heretofore referred to, be now extended into the record.

“NIXON, WALKER & TRACY,

Everett Building,

45 East 17th Street, New York.

Sept. 29th, 1916.

Mr. H. E. Bashore,

Harrisburg, Pa.

My dear Heb:

I do not know whether this letter will reach you or not, but am taking a chance.

It appears as though McMurtry and Thickers need us again regarding the property we located for them in California. There is a lawyer on from California now who has been in to see us all. As near as we can find out this property has been purchased by the Standard Oil Company and the Government is bringing suit [567—461] against either the Standard Oil Company or McMurtry to get the property back as Government Lands again.

The property was sold for a very large sum and where we did get a few dollars out of it we are of the opinion here that if we do hold out we could get quite a sum.

None of us here are going to do anything to further the interest of McMurtry in this transaction and are going to hold out to see the outcome of same. We believe that if we do we might get a nice bunch of money out of the property or if

we do not get it, the Government will get the land back, and as the Standard Oil are *interest* in it, it appears as though we might be able to do something.

They need all the locators as we understand it, and we do not know whether you have heard anything recently regarding this matter or not, but if you get this letter kindly write me and we will post you as to what we know.

Yours very truly,,
(Signed) H. M. WALKER.

HMW/H.

(In pencil:) Copy sent to Duncannon.

(Letter-head.)

“NIXON, WALKER & TRACY,
Everett Building,
45 East 17th Street.
New York.

October 2, 1916.

Mr. H. E. Bashore,
c/o Harrisburg Automobile Co.,
Harrisburg, Pa.

My Dear Heb:

Your letter of October 1st received, and I was indeed very glad to receive same. I note that a Government agent has been to interview you and no doubt, if you have not heard from Mr. Thickens, you will shortly. We have been in touch with the eight locators [568—462] and they have all agreed not to do anything more to further the interests of Mr. McMurtry at the present time. As far as we can find out, he has made, or is in a position to

make a large sum of money out of this property. We all feel that we are humbugged a bit at the start in obtaining our signatures and that we fell very much too easily when we had the first \$250.00 offered us.

I will keep you posted if any developments arise. I am very glad indeed that you have been doing so well in the automobile business and the increase that you have shown in the business should certainly be very gratifying to you.

Fred is away to-day, but I will show him your letter upon his return and I know he will be very interested in reading same.

I also note that you intend to visit New York some time this Fall or Winter and I trust that you will favor us with a call when here.

All the boys join with me in sending their best regards to you. Best wishes for your continued success, I am,

Yours very truly,
(Signed) BERT."

(Letter-head)
"NIXON, WALKER & TRACY,
Everett Building,
45 East 17th Street,
New York.

October 30th, 1916.

Mr. H. E. Bashore,
Harrisburg, Pa.

Dear Heb:

I received your letter of the 29th, and I wired you

to-day not to do anything regarding the telegram that you received from the Assistant Attorney General of the United States Government until you received letter. [569—463]

Beg to advise that as far as we can find out the McMurtry interests are still in New York. They have met with no success in obtaining any of the locators that were in our office at the time to do anything to further their interest. We are all together on the subject and it appears that if we refuse to do anything for the McMurtry interests that we can get them to 'come across' with a nice sum, provided we would appear for them. Of course, if any of us appeared as a witness for the United States Government, and any such witnesses were not satisfied with the deal that they got from McMurtry, it would mean that the land that we located, and which has since been sold to the Standard Oil Company, would revert again to the Government. This is what the McMurtry interests want to prevent.

Mr. Mahr, who as you know, is a good fighter, expects to see the Thickens & McMurtry lawyer either this afternoon or tomorrow, and is going to put up to them in very strong terms that unless the McMurtry interests want to 'come across' with a *some* that is acceptable to all of us that someone *of will* appears as a Government witness against them. We think in this manner we may be able to force their hand.

In talking this matter over today with a number of the boys, we would dislike very much to stand in

the way of your getting a free trip to California, but we believe if you would hold off a few days until we can get something concrete that it might pay you a good deal better to go to California as a witness for yourself rather than for the Government.

We will keep you posted on everything that is done, and you will hear from us in time to give the Government an answer, so that if you should decide that you wanted to go as a Government witness you could arrange it so you could be there by November 22nd. [570—464]

With kindest regards I am,

Yours very sincerely,

(Signed) BERT.

HMW/H.

P. S.—Since writing you, Mr. Mahr has had Mr. Thickens on the telephone and has told him very plainly that ten of the locators, whom he and I represent will do nothing to further the interests of Mr. McMurtry unless Mr. McMurtry 'comes across,' with what we consider our just share of the proceeds of the sale of the property. One half of the property that we located was sold for \$1,370,000.00 and by rights, we as locators, were entitled to 1/32 of this.

As Mr. Mahr told Mr. Thickens we did not expect to get 1/32, but we were entitled to a good deal better share of same than the few hundred dollars that were given us, and that we would not do anything further to further the interests of Mr. McMurtry unless they wanted to meet us the way that we thought they should. He has asked us not to do

anything to further the interests of the Government and stated that he would telegraph to San Francisco at once regarding our position and that we should hear from him in two or three days time. Just as soon as we hear anything further from Mr. Thickens I will advise you."

(Postal Telegraph Blank.)

"New York NY Oct 30 1916.

P. E. Basehore, care Harrisburg Auto Co. 3rd & Hamilton, Harrisburg, Pa. Do not do anything until receive letter.

H. M. WALKER."

(Letter-head)

"NIXON, WALKER & TRACY,

Everett Building,

45 East 17th Street,

New York.

November 2, 1916. [571—465]

Mr. H. E. Bashore,

c/o The Harrisburg Automobile Co.,

Harrisburg, Pa.

My dear Heb:

Your letter received, and we expect to wire you tomorrow what to do about advising the government that you will appear for them as a witness.

Some of the boys in the office today received from Mr. Helms who is in San Francisco and represents Mr. McMurtry, the following telegram:

'Your attendance required November 20th. Transportation and advance expenses arranged through

New York Central. Call at office #1216 Broadway and arrange routing here direct, returning at your pleasure. Compensation for loss of time guaranteed by principals here and will be arranged on arrival. Wire answer c/o Palace Hotel.'

We have an appointment to see Mr. Thickens tomorrow and we expect to have some definite information from him as to what the McMurtry interests intend to do. We will then advise you by wire whether it will be best for you to appear as a witness for the McMurtry interests or the Government.

With kindest regards, I am,

Yours very truly,
(Sgd.) BERT."

(Letter-head)

"NIXON, WALKER & TRACY,
Everett Building,
45 East 17th Street,
New York.

November 3, 1916.

Mr. H. E. Bashore,

c/o The Harrisburg Automobile Co.,
Harrisburg, Pa.

My dear Heb: [572—466]

I received your letter of November 2nd and I telegraphed you this morning, as follows:

'Have made arrangements for you to go with rest of the boys as McMurtry witness. Traveling expenses all paid and generous offer of our just dividends if our case is won. Wire government you cannot

go. Say nothing else. Arrange to come to New York in a few days. See letter."

Beg to advise that this morning Mr. Mahr, Mr. Metz and myself met Mr. Thickens at the McAlpin Hotel. We told him that unless the McMurtry interests decided to come across with a fair portion to the thirty-two locators that eight *witness* that they want to go to California would not go, unless they went as government witnesses.

Mr. Thickens showed us two telegrams that he had received from Mr. McMurtry in San Francisco in which he stated that we were needed very badly for their side and that they would pay all traveling expenses to San Francisco, with a liberal allowance for incidentals. They would also pay any amount that any of the boys lost for loss of time away from business.

We told Mr. Thickens that this was all very well, but that we must have some definite idea as to what we, as locators, would get out of same, provided the suit was won by the McMurtry interests.

Mr. Thickens wanted to know what we thought we were entitled to, and we told him that it had been agreed upon to sell the property for somewhere around two million dollars, and the thirty-two locators of this certain section were entitled to at least five hundred thousand dollars. The McMurtry interests could then have the balance. He laughed at this proposition and we told him it was nothing to joke about, that we felt that the [573—467] thirty-two locators were entitled to this amount.

He stated that that would be over fifteen thousand dollars a piece, and we told him that was about the amount we felt that we were entitled to.

He has wired Mr. McMurtry what we have said and expects an answer by wire from him either late this afternoon or tomorrow morning.

Where, of course, we may not get this amount, we are of one mind that we are going to get something pretty good out of it, as our just share, provided the suit is won by the McMurtry interests. We have also had a lawyer's advice on this subject and he tells us that it can be so arranged before any of the boys go that the amount that is agreed upon that we are to get will be in New York before they go, so that if the suit is won there will be no question, but what the amount will be paid.

I trust that you have decided to go as a McMurtry witness for the reason that if the suit is won, you will all benefit alike. If the suit is lost, you will have all your expenses paid to San Francisco and return, with a liberal allowance for the loss of time, any way.

Of course, if the government should win the case, no one would get any thing and if the McMurtry interests win, I believe that we are sure to come in for some amount, but as stated, I cannot say definitely what it will be now. The money is in New York now to pay all traveling expenses for the boys who have said they will go. Those who have said they will go are, Eugene Metz, Walter Wilson, William Keenan, Joe Farrell, Will Mahr and we

took the liberty of saying that we believed you would go as a McMurtry witness. [574—468]

We trust that we did not overstep ourselves in saying this for you. We believe it would be advisable if you could arrange to come to New York the first of the week. Of course, we will be closed on Tuesday, so if you cannot come Monday make it Wednesday.

Mr. Thickens will pay your expenses from Harrisburg, to New York, just the same as he will your expenses to San Francisco.

I believe that we have acted for the best interests of all concerned in this matter, and trust that you will agree with me.

Hoping to see you soon, I am,

Yours very truly,

(Signed) BERT."

(Letter-head)

"NIXON, WALKER & TRACY,
Everett Building,
45 East 17th Street,
New York.

Nov. 6th, 1916.

Mr. H. E. Bashore,
c/o Harrisburg, Pa.

My dear Heb:

I received your letter of November 5th, and was indeed surprised that you had decided that you think it best to go as a government witness. If you go as a government witness you can only tell the truth, which is all that is wanted of you if you

go as a witness for McMurtry. All that the government will want to know is were you satisfied. It appears that Mr. Thickens has a letter in his possession from you written when you were with Henry Sonneborn & Company, in which you stated [575—469] that you were very much pleased with the amount that you received, that that you were surprised you received so much, which would certainly go to show that you were satisfied with the transaction and this is all that you would be expected to testify to except that you were an original locator.

It appears to us that your only chance, as well as the rest of us, of getting a fair dividend, that we here believe we were entitled to, is for you to go as a McMurtry witness with the rest of the boys from here. If this is done it really appears to us as though a good portion of our just receipts will come back.

We know that you wish to make the trip to California, but we believe that it is wiser for you and more to your own personal interest to go as a friendly witness to the McMurtry interest than otherwise.

We are expecting a long letter from San Francisco Wednesday or Thursday that should have a great deal of information in it, and, as stated, believe that it would be best for you to go with our boys. Of course, you can do as you think best.

Kindly advise whether we can count on you being with us or not, for as we wrote you personally

all of the money for expenses is in New York now.

Yours very truly,

HMW/H.

(Signed) BERT."

(Letter-head)

"NIXON, WALKER & TRACY,

Everett Building,

45 East 17th Street,

New York.

November 13, 1916.

Mr. H. E. Bashore,

Harrisburg, Pa.

Dear Heb: [576—470]

Your favor of the 8th received and I am indeed *very that* you have been laid up with a bad cold.

Nothing new has developed, as yet, except that the trial has been postponed for one week from November 20th.

Mr. Thickers has not as yet received the letter that he stated has been forwarded, so we have nothing new to report. Just as soon as we hear any thing of interest, we will advise you without delay.

Trusting that by this time you have gotten the better of your cold, I am with kindest regards,

Yours very truly,

BERT."

(Letter-head)

“HARRISBURG AUTOMOBILE COMPANY,
INC.

Harrisburg, Pa., Oct. 1, 1916.

H. M. Walker,
New York.

Dear Bert:

Your letter reached me yesterday at the same old stand where I have been plugging, to my dear friends in New York, as a sort of a ‘Rip Van Winkle.’

Was very glad that you put me wise to the line of dope with reference to the McMurtry-Thickens deal. At the time I signed that last paper sent me I was suspicious and if you remember I wrote Fred on the subject but when you get something for nothing there was not much use putting up a fight so I fell in line with the rest of you boys.

About two weeks ago there was a government detective from California interview me as to the why’s and wherefore’s and I learned at that time that the land had been disposed of for [577—471] quite a nice sum. Also that the government would try to get it back but he said the evidence for the government was very slim because McMurtry had lived up to the requirements. He wanted me to give a signed statement which I refused to do. I still possess all the correspondence received from Thickens on the subject and it may prove of some assistance in the matter because I was one of the few that were written to. Also have a financial statement sent

me by the Oil Co. which condition at that time was very flattering. I am willing to give any assistance I can to help you fellows along in the matter but look out that that wise lawyer from California don't clean us all. He is out for what he can get out of it. You know we 'rubes' out here are sort of skeptical. Keep me posted.

It seems like old times to get a few lines from you and many, many times I have wondered how you all were getting along but too busy in my own line to take a few minutes to write. I have been devoting every ounce of energy to make this business a success and will give you a little idea of what has been done so you can judge for yourself whether I am a has been or not. In 1913 we sold

200 cars, 1914, 300; 1915, ~~450~~; 1916, 700 and our contract for the next twelve months is 75 cars per month or practically 1000 cars. We have 50 dealers in this state buying cars through this office and carrying \$15,000 worth of parts on hand. We handle nothing but the 'REO' Pleasure Cars and Trucks.' Many changes have been necessary to handle this rapid increase in business which of course you cannot realize on paper, you have to see our plant to figure that out, so H. E. B. has had his hands full but it is a great pleasure to watch success succeed. This winter I hope to make a short trip over your way and it would afford me much pleasure to mingle with you all again for awhile. [578—472] Give my kindest regards to Fred and the

other boys and my best wishes for your own success.
Keep me advised.

Yours sincerely,
(Signed) BASHORE."

(Letter-head)

"HARRISBURG AUTOMOBILE COMPANY,
INC.

Harrisburg, Pa., Oct. 29, 1916.

Dear Bert:

I just received the following telegram from San Francisco. 'Will you come to San Francisco, Cal., and appear as witness for United States on November Twenty-second if fees and mileage are paid by the Government at rate of three dollars per day while absent from your city and five cents per mile each way. Will advance railroad fare if desired. Answer collect government rate. Signed Hall, Special Assistant to Attorney General.'

Think this over and wire me at my expense if my appearing there is going to interfere in any way with the future prospects of the boys getting what belongs to them as outlined in your recent letter. I haven't had my vacation as yet and this trip would be a treat to me but I do not want to do anything that is going to prove our chances a failure. I am writing this in haste—wire me your opinion and I will guide myself accordingly. With the same good wishes, remain,

Yours sincerely,
H. E. BASHORE."

(Letter-head)

“HARRISBURG AUTOMOBILE COMPANY,
INC.

Harrisburg, Pa., Oct. 31, 1916.

Dear Bert:

Received your wire yesterday and your letter this [579—473] morning, which was digested thoroughly and will obey your command ‘rest arms’ until further advised. If Billy Mahr, the wonderful orator, cannot pull off that little stunt with Thickens, special wise guy, for McMurtry, the king pin of the oil fields, then your ‘hayseed’ friend will have to go all the way to San Francisco and talk dutch to them; cannot understand why they selected me any way, I am not half as good looking as you fellows, don’t possess the up-to-date business methods as you New Yorkers, and worst of all, three weeks away from this ere village, why I would be be an entire stranger when I got home. The more I think of the whole thing I never dreamed that McMurtry or Thickens could pull such a thing over on you poor ‘boobs’ who call yourselves ‘New Yorkers.’ Laying all jokes aside—just keep me posted and if there is nothing doing why then I am going to take that joy ride all right but will do nothing until you advise me further which must be by Saturday of this week. Will have to wire then to get check here in time for car fare. That will be all for today so will close with best regards to the boys and yourself.

Yours sincerely,
H. E. BASHORE.”

(Letter-head)

“HARRISBURG AUTOMOBILE COMPANY,
INC.

Harrisburg, Pa., Nov. 2, 1916.

Dear Bert:

Just received another wire from San Francisco asking me to give them my decision tomorrow, Friday, so if I do not hear from you by tomorrow evening will send a night wire that I will be there on November 20th. McMurtry has had ample time to know what he is going to do and you fellows have already extended him [580—474] more courtesies than he is entitled to. Personally, I do not think he will do anything, simply keep you guessing until it is too late, as he thinks, for you to get out there. Will not take up any more of your time today. If they come across and you figure the amount enough for me to remain at home wire me accordingly. With best wishes, remain,

Yours sincerely,

H. E. BASHORE.”

(Letter-head)

“HARRISBURG AUTOMOBILE COM-
PANY, INC.

Harrisburg, Pa., Nov. 4, 1916.

H. M. Walker,
New York.

Dear Bert:

Received your wire and both letters which have been noted carefully. I have given this proposition

serious consideration for the past week, been in consultation with my lawyer several times with the result that his advice and my conscience tell me to go to San Francisco as a witness for the United States Government. At this time it would be impossible for me to come to New York next week on account of planning for the big trip but if Mr. Thickers wants to see me he knows where I am. That is all I will say at this time.

Yours very truly,

(Signed) H. E. BASHORE."

(Letter-head)

"HARRISBURG AUTOMOBILE COMPANY, INC.

Harrisburg, Pa., Nov. 4, 1916.

Dear Bert:

The enclosed letter is rather short but I expect that you will show it to Thickers and that is why I did not say any [581—475] more. The McMurtry interests cannot afford to have me go there as a witness for the U. S. Government but that is up to them. My decision is based on good grounds and regret cannot put same on paper at this time. Expect to leave here about the 14th but have not decided as yet whether I will go via Chicago or Washington. Let me know the plans of the boys, may be able to arrange to go with them. Let me know the final answer about the \$15,000 proposition. Will not wire my final answer to San Francisco until Wednesday of next week and that will give Thick-

(Deposition of Herbert M. Walker.)

ens a chance if he wants it. Keep me posted.

Yours sincerely,

(Signed) H. E. BASHORE."

(Letter-head)

"HARRISBURG AUTOMOBILE COMPANY,
Harrisburg, Pa., Nov. 8, 1916.

Dear Bert:

Have been laid up with a bad cold since Saturday and that is why you have not heard from me more promptly. Unless I feel a whole lot better than I do now I would not take that trip out there under any circumstances. Did not expect that my last letter would cause any disappointment among you all but now see how you read it. I know that you are conscientious in all that you say and have done and firmly believe that every move has been well thought over and as far as you know for the best interest of all concerned. While we may have been satisfied we now know and feel that the McMurtry interests have made 'goats' out of us all—with that in mind I cannot warm up to any line of argument that they are going to hand out—I might be wrong but that is how I feel about it. On the other hand they have never directly requested me to act as their witness, if they really wanted me they could have very easily dealt with me direct [582—476] which would have been much better than through you. If I should go as their witness I would feel like a 'puppy dog.' Those are my frank sentiments. I don't want you to think that I have any desire to be

(Deposition of Herbert M. Walker.)

arbitrary nor do I want to do anything that is going to mar your personal interests in this matter and I have been just as conscientious about everything as you have. The Government have asked me to be their witness, they have told me what they would do in the way of remuneration, that much I know. If I should decide to act as their witness I am simply going to tell the truth and nothing else—I have no desire to fight this proposition or start anything—and my lawyer claims that my being a witness for the Government under those circumstances would not in any way injure our future possibilities if McMurtry wins the suit. I remembered very well what I had written to Thickens, in fact I have all the correspondence but it was no intention of mine to use this unless forced to do so. By the time you get this letter you will have that long letter from San Francisco and I would appreciate your advising me to contents. It may help me to decide this knotty problem. In the meantime I will patiently wait. With kindest regards, remain,

Yours very truly,

H. E. B."

Cross-examination.

Am forty-one years of age. Was with Nixon & Thickens during its existence four or five years. Prior to that was salesman with the American Woolen Company. Came to New York in the spring of 1902.

(Plaintiff's Exhibit No. 4 shown witness.)

Yes, I have now read it and notice that I granted

(Deposition of Herbert M. Walker.)

power to Mr. [583—477] McMurtry to locate mining lands in any place in the United States and develop them. Yes, I notice also that it gives him the right to sell and mortgage the lands that he might locate, or lease them or any part of them. Yes, I undoubtedly read it when I signed it. No, there was nothing then said by Thickers to me on the subject of lending my name so that McMurtry could locate lands for his own benefit or for the benefit of any person but himself nor was there any insinuation to that effect, nor any agreement that McMurtry would have any interest in any lands that might be located in my name, nor did Thickers, McMurtry or any of the boys themselves who signed the power tell me that any suggestions of that kind had been made to them. No, there was no suggestion or statement made to me that in the event lands were located in my name I would be expected to transfer any interest in the lands to any other firm, corporation or person or that in fact the lands or any part of them would belong to McMurtry or anybody else. No, there was no suggestion or understanding made to me by Thickers, McMurtry or anybody else, that I was to be paid for the use of my name as a locator. No, I never modified, set aside or repudiated or attempted so to do this power of attorney.

(Plaintiff's Exhibit No. 75 shown witness.)

Yes, I read that ratification before signing. I sent it, as near as I can remember, to a lawyer to go over and see if he had any suggestions to make

(Deposition of Herbert M. Walker.)

Yes, we associates there in the office talked it over about consulting a lawyer. The associates were Mahr, Metz, Wilson and myself. Don't think Romaine and Keenan were with us at that time. No, I never heard any statement among the boys that it didn't make a particle of difference about the matter that they were not interested in it and that they were lending their names to McMurtry or Thickers. Yes, I then knew [584—478] that this original power of attorney had been filed.

Q. You also knew from the time of the first reading of the power of attorney that action had been taken under it, that he had located lands, and that they were now asking you to ratify and confirm that power of attorney? A. I did know that, and the reason we had a lawyer go over this ratification was so that we would not, so that I would not sign anything that I did not think was right to sign, and therefore I had the word "lawfully" inserted.

No, McMurtry did not tell me that this ratification was a matter of form. He said that the reason he wanted a ratification was because he had sold some of the property and that in order to work the balance of the property he must have some money to continue that. Yes, I believe he said something to the effect that the lawyers for the persons with whom he had made contracts for you before they would proceed with the matter wanted to be sure that the people who had given the power of attorney were alive and would ratify it and the contracts. No, I didn't know that he had made contracts to dis-

(Deposition of Herbert M. Walker.)

pose of the property. He didn't tell us the extent of his contracts. Yes, I understood then that it was necessary to do this in order to develop the rest of the lands, but whatever would come out of this contract was problematical and would depend on whether oil was found and how much oil was found. No, I did not then have any intention of cheating or defrauding anybody in connection with lands which had been located in my name and never had any intention of permitting the use of my name for the purpose of avoiding the provision of any law, and no such suggestion was ever made to me. No, no person ever attempted to influence my testimony in this case, and prior to April 1, 1917, I never [585—479] talked with any of the attorneys in this case. I was not told that this check for \$250 upon which I put my name or the \$250 from Searls September 26, 1910, was a gift or that it was for the trouble I had in signing my name to the ratification or the power of attorney. Yes, I understood that these moneys were coming out of the sale of my part of the land located in my name. Yes, I understood that the money came from this contract which I had ratified.

Redirect Examination.

Q. Didn't Mr. McMurtry tell you either at the time he asked you to sign the ratification, or at the time he gave you the shares of stock in the corporation, that he had conveyed part of the lands which had been located in your name to Mr. H. C. Stratton, in 1909, in payment of debts that he, McMurtry,

(Deposition of Herbert M. Walker.)

or any other person had contracted in the developing and holding of the lands at a time when they were held by the so-called Chicago group of locators? A. I never remember any such occurrence.

Yes, since the signing of this ratification we boys have talked over the question as to whether McMurtry had cheated us. No, there has been no talk among us that McMurtry and Thickers used our names for the purpose of defrauding the government or these defendants in this case. Yes, I do feel that I have been defrauded out of money that should have lawfully come to me—from the location of these properties. I have no recollection of ever meeting any attorney of the Government in any respect or any representative of any of these defendants prior to April, 1917, unless Mr. Helm is such a representative. Mr. Helm called on me I think September, 1916, but in no way did he ever mention how I was to testify, or ask about the facts. Never discussed [586—480] anything about it. He asked me if I would go to San Francisco if I were called as a witness.

Q. You testified on cross-examination that at various times, at the time of signing the ratification, receiving the first \$250, and at the time of executing the power of attorney, there was no suggestion made to you that your names were to be used or had been used to defraud the Government or the defendants or anybody. I now invite your attention to a copy of your letter of October 2d, 1916, addressed to Mr.

(Deposition of Herbert M. Walker.)

H. E. Bashore, Harrisburg Automobile Company, Harrisburg, Pennsylvania, in which you state as follows:

“As far as we can find out, he has made, or is in a position to make a large sum of money out of this property. We all feel that we were humbugged a bit at the start in obtaining our signatures, and that we fell very much too easily when we had the first \$250 offered us.”

When was it that you first felt that you had been humbugged a bit at the start in obtaining your signatures, and that you had fallen very much too easily when you had the first \$250 offered to you?

A. Why, along in August or September, 1916, I began to feel that we had not been truly informed by Mr. McMurtry of the conditions that existed there, as to what moneys would accrue from this property when we gave him the ratification. Q. From what

source did you acquire the information which engendered that feeling in you? A. Why, what little

we had really been able to learn about the moneys that had come from this property that was located

for us or for me. Q. From whom or in what manner did you learn this little about the money that had come from the properties so located? A. I cannot

answer that because it was, we never really got or I never really [587—481] got to the facts in

this thing until the four or five locators went to San Francisco and learned something out there. Q. But

this letter was written on October 2d, 1916, and the locators didn't go to San Francisco, according to

(Deposition of Herbert M. Walker.)

their testimony, until in November, 1916. I want to know now from whom you received the information which engendered this belief that you had not been, to use the language of the letter "that you were humbugged a bit at the start in obtaining your signatures"? A. In obtaining my signature, means to the ratification of the power of attorney, in that letter. That is what my letter refers to. Q. Will you now tell me from what source you received the information that engendered in you the belief or the feeling that you were humbugged a bit at the start in obtaining your signatures, and that you fell very much too easily when you had the first \$250 offered you? A. Is there any letter previous to that? Let me see if I can refresh my memory. Q. You may have them all (handing witness letters). A. I will answer now. The WITNESS.—(Continuing.) Why, I believe that I must have gotten my information from some of the other locators who had some conversation with Mr. Helm or Mr. Thickens. [588—482]

Deposition of Charles W. Thorn, for Plaintiff.

CHARLES W. THORN, called on behalf of the plaintiff April 26, 1917, testified by deposition as follows:

Reside at Middletown, New York. Am employed by the J. M. Pitkin & Company, pure food products. Never lived west of the Mississippi River, and prior to this occasion never acquired title to any public lands outside of the transactions here involved. In

(Deposition of Charles W. Thorn.)

1906 and 1907, lived in Yonkers, New York. Was secretary of the Empire Oil and Development Company from about the fall of 1906, about which time I met Mr. McMurtry, who was engaged in promoting oil property. He formed the Great California Oil & Development Company of which I sold stock. It went out of business in about the fall of 1906, just before the Empire Company was organized. I was not a stockholder in that company. McMurtry was president. I never had any occasion to examine the books of that company to ascertain the assets or resources. Was told by McMurtry, but don't remember what they were. Understood he held the lands under option in California—in the Midway Field, Kern County. Don't know what became of the books of that company. The Empire Company organized three weeks after the Great California Company went out of existence. At the time the Empire Company was organized I had charge of the books. The office was at No. 299 Broadway, the same place that the California Company had been located. McMurtry was president of the Empire Company; Harder, Vice-president; Searls, Treasurer; and I was secretary and Mr. Lewis was an officer. Neither Searls, Harder nor Lewis were officers of the California Company. Yes, from its organization up to December 31, 1907, I knew what the assets of the Empire Company [589—483] were. It held oil lands in the state of California under option. I knew at the time with whom the options were, but the name now slips my memory.

(Deposition of Charles W. Thorn.)

Yes, Charles Ladd of Portland, Oregon, is the name I had in mind as the man from whom McMurtry held the option. As I remember it now, Ladd was president of the Oregon Midway Oil Company, which company was in some way connected with the option. I know the Midway Oregon name was used. The lands were in the Midway District, Kern County. I knew at the time, but cannot now remember the particular locations or descriptions of the lands. Don't think I knew the names of the locations. Don't recall the mining claims "Blow-out" or "Alice" in this connection. Yes, I knew the Stratton Water Company was included in the option, the land where the Stratton Water Company was located. To the best of my memory there was no development on such lands worth being done. There was someone on the property, but what was being done I don't know. No, as secretary, I received no reports of drilling of oil wells on the land held in option. During 1906 and 1907 saw McMurtry nearly every day and discussed the oil situation in California.

Q. During that time, and particularly during the year 1907, did you have any talk with Mr. McMurtry about any locations that had been made by people who resided in Chicago, and the vicinity of Chicago, Illinois? A. Why, I remember that the fact was mentioned, but I don't remember the conversation. Q. Did the Empire Oil & Development Company have anything to do with or did it have any control over any lands located by people who

(Deposition of Charles W. Thorn.)

resided in Chicago or near Chicago? [590—484]

A. I don't remember. Remember the subject of Chicago locations being mentioned in my talk with McMurtry. The affairs of the Empire Company were wound up in the first part of 1909.

Q. The records of Kern County, California, disclose that there is recorded a power of attorney which purports to have been executed by C. W. Thorn (Plaintiff's Exhibit No. 7 stated). Are you the C. W. Thorn whose name appears there?

A. I am.

I executed the same at 299 Broadway. Of those who signed before I did I knew Frank D. Taylor. Think he was requested by Edward L. Powell to sign. Think McMurtry requested Powell. Presume I had some conversation with Taylor and Powell but don't recall what it was. Knew Daniel W. Darling. Asked him to sign the power of attorney. He had previously talked with McMurtry. Don't recall any discussion with Darling at the time I asked him to sign. Also asked J. W. Pentz to sign. Explained to him the placer mining laws. Told him I knew McMurtry a long time and believed he was a man who understood the oil situation in California, and that I had every confidence to believe that he would locate to the best of our interests. Believe I presented the power to S. H. Freeman to sign. Presume I talked with him, but he had talked with McMurtry and understood the situation. There had been some talk regarding McMurtry going back to California, and these men

(Deposition of Charles W. Thorn.)

wanted him to locate lands for us. Yes, some of these had invested money in the Empire Company and had no prospects of getting it back. Thickens looked after getting the names signed to one of the powers of attorney. I was present on several occasions when McMurtry had conversation with Thickens concerning these oil matters. I heard McMurtry ask Thickens, Searls and myself if [591—485] we could get some of our friends to sign and I told him yes. All I remember is that he had made up his mind to go West and had secured the blanks, and if we would sign them and get some of our friends to sign them he would get locations for us. This conversation occurred a few days before the powers were actually signed. McMurtry offered to locate lands for us and we accepted the offer. No, I don't remember that McMurtry's leaving New York had anything to do with the affairs of the Empire Oil Company. Of those who signed the power of attorney, Searls, Harder, Taylor, Powell, Bashore, Romaine and F. S. Thorn had been interested in the Empire Company, and maybe others that I don't recall. Yes, I believe George A. Meinecke was also. I also asked Banks to sign. Freeman asked Chapman to sign. Took him to his place of business and after Freeman introduced us and left Chapman said that Freeman had led him to believe there would be millions as a result of becoming a locator, and I told him that I didn't know whether there would be millions from it or not, but there might be something in it, as it all depended whether oil was discovered.

(Deposition of Charles W. Thorn.)

I also asked Richmond to sign. Yes, think he was a stockholder in the Empire Company. Also asked Frederick S. Thorn, who was my brother and was a stockholder in the Empire Company. Also asked Harry B. Thorn, who is my son. Told him that McMurtry was going back west and had offered to make some locations for us and asked him if he would like to become one of the locators. He wanted to know "what there was in it" and I told him that depended on the development of any land that was located; that we believed that there was land out there where there was oil and if oil was located there would probably be considerable into it. I explained to each and every one that I asked the placer mining [592—486] laws, and had them read the power of attorney, with the possible exception of Richmond, who understood the placer mining laws. After these powers were signed and McMurtry left, I continued looking after the office of the Empire Company. No, no stock was sold after December, 1907. We had negotiations on for raising funds to develop the property with. I may have made inquiries of McMurtry during the year 1908, as to what was done under the power of attorney, but I don't remember. No, I have none of the correspondence which may have passed between us during that time. The letters I sent him during that time were destroyed, I believe, when we closed the office in February or March, 1909. No, between the time McMurtry left in 1907 and the time we closed the office in February or March, 1909, the Empire Company did not ac-

(Deposition of Charles W. Thorn.)

quire, either by purchase or lease or option or in any way, the right to possession of any oil lands; not to my knowledge, or carry on any development of any oil lands in California to my knowledge. I learned during 1908 that McMurtry had located some lands in San Benito County under the power of attorney. Think I then knew how many locations were made, but don't remember now. It seems as though it was something like 10,000 acres that was located. The first time I learned that McMurtry had located lands in Kern County under the power of attorney was in 1910, about August. When the Empire Company went out of business, I packed up the books and records and shipped them to McMurtry at San Francisco. Don't recall of hearing during 1909 about locations being made in the Midway Field under the power of attorney. No, prior to August 1, 1910, I made no inquiry as to what locations McMurtry had made in Kern County under the power. Did not know he was going to make any in that County. McMurtry told me in August, 1910, that he had. [593—487] Told me the sections and that in order to make discovery had sold part of the lands with the understanding that the party would do the development work and secure patents to protect the balance, and that he also had made a contract with Herrin and others, which he explained was the Associated Oil Company, for the balance of the property for \$2,200,000, to be paid for out of the production at the rate of twenty cents per barrel. Don't remember all the sections he

(Deposition of Charles W. Thorn.)

mentioned. Recall sections 32, 34, 36 and 28. Don't remember that he mentioned section 22. He told me my name appeared as a locator on one of the quarters in each section. I was at that time asked to sign the ratification (Plaintiff's Exhibit No. 78 shown witness). Yes, that is the ratification I executed. I remember McMurtry told me the reason he wanted that ratification was that Herrin of the Associated Oil Company wanted to be sure, wanted McMurtry to get the powers of attorney ratified to make sure that we were real live locators. He was to receive \$2,200,000 for the land that he had sold. Said he had received an option payment on the contract and that it was not enough to go around and make the size of payment that he wanted to make to each of the locators on it, but it would go part way around and he asked me if I wanted the money then, and I told him I did and he said he was going to give each locator \$250, but that it would not go all the way around. Think he said the amount he had received, but I don't remember. He paid part of the locators \$250 then and the remainder \$250 in 1911. From the money received under this contract of August 4, 1910, I was told that by McMurtry in 1910. This check No. 102, dated August 25, 1910, on the Second National Bank of the City of New York, for \$250 is the one given me by McMurtry, and the typewriting on the back thereof was there when I read it. Searls presented [594—488] the check to me. The next transaction that I recall was in 1911. McMurtry came on to

(Deposition of Charles W. Thorn.)

New York and told us that he had organized the Pacific Oil Lands Company in order to distribute the proceeds of the locations. He then gave me a certificate for 1,000 shares. This certificate No. 23 is the one he gave me and the receipt attached to the stub dated September 11, 1911, bears my signature. Don't think I signed that slip at the time because I made those slips myself. I signed the slip and handed it to him within a few days. At that time McMurtry told us that he had closed the contract with the Associated Oil Company that he was negotiating in 1910, and had received other moneys out of which he was going to pay the balance of the locators \$250. He also said he had transferred his contract with the Associated Oil Company to the Pacific Oil Lands Company.

Q. Did you know at that time whether or not all lands which had been located in the names of your locators had been embraced and affected by this contract with the Associated Oil Company? A. Section

28. Q. Did Mr. McMurtry tell you at the time he gave you the certificate No. 23, whether or not all of the lands that had been located by the use of the names of your locators, had been embraced in this contract with the Associated Oil Company? A. The section 28 in San Benito had not been embraced into it.

In the contract. Q. Did he tell you whether or not all the lands in the Midway Field, except section 28, had been embraced in this contract with the Associated Oil Company? A. There were 1,440 acres .

(Deposition of Charles W. Thorn.)

which had been sold to the Associated under this contract.

Don't remember that he said that all the lands located in the Midway field, with the exception of section 28, had been sold by the Associated under this contract. Don't remember that [595—489] I then learned of any other lands that had been located by McMurtry which were not embraced in this contract, other than the lands in section 28, and I made no inquiry as to the same. McMurtry then told me who the stockholders in the Pacific Company were, but I don't now remember. I understood that McMurtry was a stockholder and also Major Hoeppner. No, I did not then know whether McMurtry was a locator on any of these lands. Didn't know whether Hoeppner was. Don't remember that I made any inquiry as to whether Hoeppner was. The next paper I signed was a proxy in August, 1913, which is Plaintiff's Exhibit No. 79.

(Plaintiff's Exhibit No. 40 shown witness.)

Yes, I received a notice like that. The next paper I received was a letter in December, 1913, requesting my consent to the distribution of a dividend.

(Plaintiff's Exhibit No. 32 dated December 3, 1913, shown witness.)

Yes, I received a similar letter about that time. Yes, Plaintiff's Exhibit No. 80 is the consent which I executed.

(Plaintiff's Exhibit No. 78 offered in evidence and is as follows:)

(This is a ratification similar in form to Plain-

(Deposition of Charles W. Thorn.)

tiff's Exhibit 1 with the deposition of Frank B. Chapman.)

(Plaintiff's Exhibit No. 79 offered and read in evidence as follows:)

(This is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman.)

(Plaintiff's Exhibit No. 80 offered and read in evidence as follows:)

(This is a consent to dividend and is similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman.) [596—490]

After signing this consent to distribution of dividends I received a check in January, 1914; check No. 1189 dated San Francisco, January 8, 1914, on the Bank of California National Association San Francisco, for \$20, payable to C. W. Thorn, signed Pacific Oil Lands Company. Yes, the check bears my endorsement.

(Plaintiff's Exhibit No. 34 shown witness.)

Yes, I received a similar letter with this dividend check. Also received a statement of the company at that time, which I have and now produce. (This report is similar to Plaintiff's Exhibit No. 35.)

The next transaction which I recall was in March, 1914. Searls came to New York and stated that he wanted to buy up the stock of the Pacific Oil Lands Company to know if I was willing to sell mine. I sold him mine and received \$250 for it. I signed the assignment on this certificate No. 23 at that time. No, I haven't since then received any other stock in

(Deposition of Charles W. Thorn.)

this company or any other dividends, nor have I received anything else on account of the fact that my name appeared on account of these transactions. Yes, I was in San Francisco in November, 1916. Talked with various witnesses during that time.

Cross-examination.

No, I never attempted to revoke or modify this power of attorney to McMurtry. [597—491]

Deposition of Harry E. Bashore, for Plaintiff.

HARRY E. BASHORE, called by plaintiff April 10, 1917, testified by deposition as follows:

Reside at Harrisburg, Pa. Formerly worked in New York City, and was employed by Nixon & Thickens as office manager. Knew J. B. Thickens of this firm. He first sold me some stock, and a short time later asked me to sign a power of attorney (Plaintiff's Exhibit 4). I considered him a confidential friend. He came to me one day and asked me to sign my name to a paper which, he said, was a power of attorney giving McMurtry power to locate certain oil lands in California. He said I would not be required to put up any money, and by my signing this paper it would mean a lot to him as well as assist Mr. McMurtry. Under those conditions I did not hesitate to affix my signature, knowing that I would not be involved financially in any way, shape or form. Had no intention of acquiring land for myself, and was never informed of my name being used at any time in locating any land. After signing this power of attorney, the next I heard of the matter was some

(Deposition of Harry E. Bashore.)

time later Thickers asked me to sign another paper the name of which I have forgotten. This paper is the one referred to, and I signed and executed it (Plaintiff's Exhibit 1). (This exhibit is similar in form to Exhibit No. 1 with the deposition of Frank B. Chapman, and is dated and acknowledged August 22, 1910.) Don't recall what Thickers said then, only that all the boys who had signed the power of attorney were going to sign it. I read it before signing, but don't recall any specific conversation concerning these contracts of sale dated August 4, 1910, referred to therein. Relied a good deal on Thickers, he being a personal friend. I never felt that he would ask me to do anything but what was right. I simply signed it as I did the power of attorney. I was not then informed that my name with certain others had been employed in making the placer mining locations mentioned. At the time I signed the ratification [598—492] I claimed no interest in any land affected by this contract of August 4, 1910, between McMurtry and W. F. Herron and others. Don't recall receiving any money then, but as near as I can recall I later received and cashed a check, being check offered and read in evidence as follows:
"5th Ave. and 28th St.

No. 162.

New York Sept. 11, 1911.

SECOND NATIONAL BANK, A-63

of the City of New York.

Pay to the order of H. E. Bashore Two Hundred and Fifty Dollars. \$250.00. F. H. SEARLS."

(Endorsement:) "Received from L. B. McMurtry

(Deposition of Harry E. Bashore.)

\$250.00 in full payment of all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry bearing date the 19th day of December, 1907.

For deposit in Dauphin Deposit Trust Co.

H. E. BASHORE.

Received payment through the New York Clearing House 9-18-19. . . . Nat'l Bank of New York. Pay to the order of any bank, banker or Trust company. Prior endorsements Guaranteed. Sep. 18, 1911, Dauphin Deposit Trust Company, Harrisburg, Pa. Donald McCormick, Treasurer. C-3798."

That is the check I received from Thickens accompanied by letter reading:

"My dear Bashore:

At last things are happening. The use of your name is bearing some fruit and I am able to make good my promise, and a little more. Am enclosing check for \$250.00. Put this through your bank as soon as you can, as we want to get all the checks back as soon as possible, as we have to show them as receipts. In addition we are giving a bonus of 1000 shares stock, par value, \$1.00 per share in the Pacific Oil Lands Co. This stock will be worth \$2.00 per share very soon. So you can see I am making good. Just sign the two receipts and return them to me. Deposit your check and get that through as quickly as you can. Am glad you are on to this.

Haven't heard from you in some time but am send-

(Deposition of Harry E. Bashore.)

ing this to Duncannon and hope it will be forwarded to you at once. Let me hear from you as soon as you receive this.

Hastily,
J. B. THICKENS.

Sept. 12/11."

The next I heard with reference to these transactions was the receipt of a letter from Thickens as follows: [599—493]

"J. B. THICKENS,
79-81 Fifth Avenue,
New York.

March 16, 1914.

Mr. H. E. Bashore,
c/o Harrisburg Automobile Co.,
3rd & Hamilton Sts.,
Harrisburg, Pa.

My dear Bashore:

Once more I have good news for you. Send me your stock of the Pacific Oil Lands Co., signed by you in space designated on the back of the certificate. As soon as I receive this stock will send you check for \$250.00 which I have been authorized by the company to give to the locators for the return of this stock. The government is "making it hot" for us at the present time, and in order to carry our point with them and try to hold at least a part of our land, it is necessary to have all the stock in California. For this reason I am asking you to send me the stock properly signed by return Special Delivery. Upon

(Deposition of Harry E. Bashore.)

receipt of same will forward check to you.

Sincerely yours,

JOHN B. THICKENS.

JBT/HP.”

I received a certificate for 1000 shares of stock in the Pacific Oil Lands Company when I received this check for \$250. Held this Certificate No. 11 about three years, then I surrendered to Thickens in connection with the check for \$250 signed by Searls. After receiving this check the next thing I recall was the receipt of a letter from Mr. Walker. My correspondence with Walker on this subject is as follows:

NIXON, WALKER & TRACY,
Everett Building,
45 East 17th Street,
New York.

Sept. 29th, 1916.

Mr. H. E. Bashore,
Harrisburg, Pa.

My dear Heb:

I do not know whether this letter will reach you or not, but am taking a chance.

It appears as though McMurtry and Thickens need us again regarding the property we located for them in California. There is a lawyer on from California now who has been in to see us all. As near as we can find out this property has been purchased by the Standard Oil Company and the Government is bringing suit against either the Standard Oil Company or

McMurtry to get the property back as Government lands again.

The property was sold for a very large sum and where we did get a few dollars out of it we are of the opinion that if we do hold out we could get quite a sum.

None of us here are going to do anything to further the interest of McMurtry in this transaction and are going to [600—494] hold out to see the outcome of same. We believe that if we do we might get a nice bunch of money out of the property or if we do not get it, the Government will get the land back, and as the Standard Oil are interest in it, it appears as though we might be able to do something.

They need all of the locators as we understand it, and we do not know whether you have heard anything recently regarding this matter or not, but if you get this letter kindly write me and we will post you as to what we know.

Yours very truly,

H. M. WALKER.

HMW/H.

(In pencil:) Copy sent to Duncannon."

(Letter-head.)

"Geo. G. McFarland, President and General
Manager,

(REO) B. F. Blough, Treasurer. (REO)

HARRISBURG AUTOMOBILE COMPANY,

(Incorporated)

REO PLEASURE CARS AND TRUCKS.

General Sales Agents

Largest Garage

and Jobbers

In Central Pennsylvania,

Open all Night.

Office and Salesroom.

THIRD AND HAMILTON STREETS.

Harrisburg, Pa., Oct. 1, 1916.

H. M. Walker,
New York.

Dear Bert:

Your letter reached me yesterday at the same old stand where I have been plugging, to my dear friends in New York, as a sort of a 'Rip Van Winkle.'

Was very glad that you put me wise to the line of dope with reference to the McMurtry-Thickens deal. At that time I signed that last paper sent me I was suspicious and if you remember I wrote Fred on the subject but when you get something for nothing there was not much use putting up a fight so I fell in line with the rest of you boys.

About two weeks ago there was a government detective from California interviewed me as to the why's and wherefore's and I learned at that time that the land had been disposed of for quite a nice sum. Also

that the Government would try to get it back but he said the evidence for the government was very slim because McMurtry had lived up to the requirements. He wanted me to give a signed statement which I refused to do. I still possess all the correspondence received from Thickers on the subject and it may prove of some assistance in the matter because I was one of the few that were written to. Also have a financial statement sent me by the Oil Co. which condition at that time was very flattering. I am willing to give any assistance I can to help you fellows along in the matter but look out that that wise lawyer from California don't clean us all. He is out for what he can get out of it. You know we "rubes" out here are sort of skeptical. Keep me posted. [601—495]

It seems like old times to get a few lines from you and many, many times I have wondered how you all were getting along but too busy in my own line to take a few minutes to write. I have been devoting every ounce of energy to make this business a success and will give you a little idea of what has been done so you can judge yourself whether I am a has been or not. In 1913 we sold 200 cars, 1914, 300; 1915, 450; 1916, 700 and our contract for the next twelve months is 75 cars per month or practically 1000 cars. We have 50 dealers in this state buying cars through this office and carry \$15,000 worth of parts on hand. We handle nothing but the 'REO Pleasure Cars and Trucks.' Many changes have been necessary to handle this rapid increase in business which of course

you cannot realize on paper, you would have to see our plant to figure that out, so H. E. B. has had his hands full but it is a great pleasure to watch success succeed. This winter I hope to make a short trip over your way and it would afford me much pleasure to mingle with you all again for a while. Give my kindest regards to Fred and the other boys and my best wishes for your own success. Keep me advised.

Yours sincerely,

BASHORE.”

(Letter-head NIXON, WALKER & TRACY, as before.)

New York, October 2, 1916.

Mr. H. E. Bashore,

c/o Harrisburg Automobile Co.,

Harrisburg, Pa.

My dear Heb:

Your letter of October 1st received, and I was indeed very glad to receive same.

I note that a Government agent has been to interview you and no doubt, if you have not heard from Mr. Thickers, you will shortly. We have been in touch with the eight locators and they have all agreed not to do anything more to further interests of Mr. McMurtry at the present time. As far as we can find out, he has made, or is in a position to make a large sum of money out of this property. We all feel that we were humbugged a bit at the start in obtaining our signatures and that we fell very much too easily when we had the first \$250.00 offered us.

I will keep you posted if any developments arise.

I am very glad indeed that you have been doing so well in the Automobile business and the increase that you have shown in the business should certainly be very gratifying to you.

Fred is away today, but I will show him your letter upon his return and I know he will be very interested in reading same.

Mr. H. E. Bashore, 2. October 2, 1916.

I also note that you intend to visit New York some time this Fall or Winter and I trust that you will favor us with a call when here.

All of the boys join with me in sending their best regards to you. Best wishes for your continued success, I am,

Yours very truly,
BERT."

[602—496]

(Letter-head as before.)

"Harrisburg, Pa., Oct. 29, 1916.

Dear Bert:

I just received the following telegram from San Francisco, 'Will you come to San Francisco, Cal., and appear as witness for United States on November Twenty-second if fees and mileage are paid by Government at rate of three dollars per day while absent from your city and five cents per mile each way? Will advance railroad fare if desired. Answer collect government rate. Signed Hall, Special Assistant to Attorney General.

Think this thing over and wire me at my expense if my appearing there is going to interfere in any

way with the future prospects of the boys getting what belongs to them as outlined in your recent letter. I haven't had my vacation as yet and this trip would be a treat to me, but I do not want to do anything that is going to prove our chances a failure. I am writing this in haste—wire me your opinion and I will guide myself accordingly. With the same good wishes, I remain,

Yours sincerely,

H. E. BASHORE."

(Telegraph Blank.)

"POSTAL TELEGRAPH—COMMERCIAL
CABLES.

TELEGRAM.

Delivery No. 191.

Received at

71½ No. Third Street,

Harrisburg, Pa.

Telephones: Bell 1772, 1773

C. V. 261.

The Postal Telegraph-Cable Company (Incorporated) Transmits and Delivers This Message
Subject to the Terms and Conditions Printed
on the Back of This Blank.

80NY VR. 435 PM. 7.

By New York N Y Oct 30 1916.

P. E. Bashore,

Care Harrisburg Auto Co.

3rd & Hamilton Harrisburg, Pa.

Do not do anything until you receive letter.

H. M. WALKER.

MAIL

Telephoned 11:50 M.

By B to A. Man." [603—497]

(Letter-head as before, NIXON, WALKER &
TRACY.)

"New York, October 30th, 1916.

Mr. H. E. Bashore,
Harrisburg, Pa.

Dear Heb:

I deceived your letter of the 29th, and I wired you today not to do anything regarding the telegram that you received from the Assistant Attorney General of the United States Government until you received letter.

Beg to advise that as far as we can find out the McMurtry interests are still in New York. They have met with no success in obtaining any of the locators that were in our office at the time to do anything to further their interest. We are altogether on the subject and it appears that if we refuse to do anything for the McMurtry interests that we can get them to 'come across' with a nice sum, provided we would appear for them. Of course, if any of us appeared as a witness for the United States Government, and any such witnesses were not satisfied with the deal that they got from McMurtry, it would mean that the land that we located, and which has since been sold to the Standard Oil Company, would revert again to the Government. This is what the McMurtry interests want to prevent.

Mr. Mahr, who as you know, is a good fighter, expects to see the Thickers and McMurtry lawyer either this afternoon or tomorrow and is going to put up to them in very strong terms that unless the McMurtry interests want to 'come across' with a sum that is acceptable to all of us that some one of us will appear as a Government witness against them. We think in this manner we may be able to force their hand.

In talking this matter over today with a number of the boys, we would dislike very much to stand in the way of your getting a free trip to California, but we believe if you would hold off a few days we can get something concrete that it might pay you a good deal better to go to California as a witness for yourself rather than for the Government.

We will keep you posted on everything that is done, and you will hear from us in time to give the Government an answer, so that if you should decide that you wanted to go as a Government witness you could arrange it so you could be there by November 23rd.

With kindest regards, I am,

Yours very sincerely,

BERT.

HMW/H.

P. S.—Since writing you, Mr. Mahr has had Mr. Thickers on the telephone and has told him very plainly that ten of the locators, whom he and I represent will do nothing to further the interests of Mr. McMurtry unless Mr. McMurtry 'comes

across' with what we consider our just share of the proceeds of the sale of the property. One-half of the property that we located was sold for \$1,370,000.00, and by rights, we as locators were entitled to 1/32 of this.

As Mr. Mahr told Mr. Thickers we did not expect to get 1/32, but we were entitled to a good deal better share of same than the few hundred dollars that were given us, and that we would not do anything further to further the interests of Mr. McMurtry unless they wanted to meet us the way that we thought they should. He has asked us not to do anything to further the interests of the Government and stated that he would telegraph to San Francisco at once regarding our position and that we should hear from him in two or three days' time. Just as soon as we hear anything further from Mr. Thickers I will advise you." [604—498]

(Letter-head as before.)

"Harrisburg, Pa., Oct. 31, 1916.

Dear Bert:

Received your wire yesterday and your letter this morning which was digested thoroughly and will obey your command 'rest arms,' until further advised. If Billy Mahr, the wonderful orator, cannot pull off that little stunt with Thickers, special wise guy for McMurtry, the king pin of the oil fields, then your 'Hayseed' friend will have to go all the way to San Francisco and talk dutch to them. Cannot understand why they selected me anyway, I am not half as good looking as you fellows, don't possess the up-

to-date business methods as you New Yorkers, and worst of all, three weeks away from this ere village, why I would be an entire stranger when I got hime. The more I think of the whole thing I never dreamed that McMurtry or Thickers could pull such a thing over on you poor 'boobs' who call yourselves 'New Yorkers.' Laying all jokes aside—just keep me posted and if there is nothing doing why then I am going to take that joy ride all right but will do nothing until you advise me further which must be by Saturday of this week. Will have to wire then to get check here in time for car fare. That will be all today so will close with best regards to the boys and yourself.

Yours sincerely,
H. E. BASHORE."

(Letter-head as before, NIXON, WALKER &
TRACY.)

"New York, November 2, 1916.

Mr. H. E. Bashore,
c/o The Harrisburg Automobile Co.,
Harrisburg, Pa.

My dear Heb:

Your letter received, and we expect to wire you tomorrow what to do about advising the government that you will appear for them as a witness.

Some of the boys in the office today received from Mr. Helms who is in San Francisco and represents Mr. McMurtry, the following telegram:

'Your attendance required November 20th. Transportation and advance expenses arranged

through New York Central. Call at office No. 1216 Broadway and arrange routing here direct, returning at your pleasure. Compensation for loss of time guaranteed by principals here and will be arranged on arrival. Wire answer c/o Palace Hotel.'

We have an appointment to see Mr. Thickens tomorrow and we expect to have some definite information from him as to what the McMurtry interests intend to do. We will then advise you by wire whether it will be best for you to appear as a witness for the McMurtry interests or the government.

With kindest regards, I am,

BERT." [605—499]

(Letter-head as before.)

"Harrisburg, Pa., Nov. 2, 1916.

Dear Bert:

Just received another wire from San Francisco asking me to give them my decision tomorrow, Friday, so if I do not hear from you by tomorrow evening will send a night wire that I will be there on Nov. 20th. McMurtry has had ample time to know what he is going to do and you fellows have already extended him more courtesies than he is entitled to. Personally, I do not think he will do anything, simply keep you guessing until it is too later, as he thinks for you to get out there. Will not take up any more of your time today. If they come across and you figure the amount enough for me to remain at home wire me accordingly. With best wishes, remain,

Yours sincerely,

H. E. BASHORE."

(Letter-head as before, NIXON, WALKER &
TRACY.)

“New York, November 3, 1916.

Mr. H. E. Bashore,
c/o The Harrisburg Automobile Co.,
Harrisburg, Pa.

My dear Heb:

I received your letter of November 2nd and I telegraphed you this morning as follows:

‘Have made arrangements for you to go with rest of boys as McMurtry witness. Traveling expenses all paid and generous offer of our just dividends if our case is won. Wire government you cannot go. Say nothing else. Arrange to come to New York in a few days. See letter.’

Beg to advise that this morning Mr. Mahr, Mr. Metz and myself met Mr. Thickens at the McAlpen Hotel. We told him that unless the McMurtry interests decided to come across with the fair portion to the thirty-two locators that eight *witness* that they want to go to California would not go, unless they went as government witnesses.

Mr. Thickens showed us two telegrams that he had received from McMurtry in San Francisco in which he stated that we were needed very badly for their side and that they would pay all traveling expenses to San Francisco, with a liberal allowance for incidentals. They would also pay any amount that any of the boys lost for loss of time away from business.

We told Mr. Thickens that this was all very well,

but that we must have some definite idea as to what we, as locators, would get out of same, provided the suit was won by the McMurtry interests.

Mr. Thickens wanted to know what we thought we were entitled to, and we told him that it had been agreed upon to sell the property for somewheres around two million dollars, and the thirty-two locators of this certain section were entitled to at least five hundred thousand dollars. The McMurtry interests could then have the balance. He laughed at this proposition, and we told him it was nothing to joke about, that we felt that the thirty-two locators were entitled to this amount. [606—500]

He stated that that would be over fifteen thousand dollars a piece, and we told him that was about the amount we felt we were entitled to.

He has wired Mr. McMurtry what we have said and expects an answer by wire from him either late this afternoon or tomorrow morning.

Where, of course, we may not get this amount, we are of one mind that we are going to get something pretty good out of it, as our just share, provided the suit is won by the McMurtry interests. We have also had a lawyer's advice on this subject and he tells us that it can be so arranged before any of the boys go that the amount that is agreed upon that we are to get will be in New York before they go, so that if the suit is won there will be no question, but what the amount will be paid.

I trust that you have decided to go as a McMurtry witness, for the reason that if the suit is

won, we will all benefit alike. If the suit is lost you will have all of your expenses paid to San Francisco, and return, with a liberal allowance for the loss of time, any way.

Of course, if the government should win the case, no one would get anything and if the McMurtry interests win, I believe that we are sure to come in for some amount, but as stated, I cannot say definitely what it will be now. The money is in New York now to pay all traveling expenses for the boys who have said they will go. Those who have said that they will go are, Eugene Metz, Walter Wilson, William Keenan, Joe Farrell, Will Mahr, and we took the liberty of saying that we believed you would go as a McMurtry witness.

We trust that we did not overstep ourselves in saying this for you. We believe it would be advisable if you could arrange to come to New York the first of the week. Of course, we will be closed on Tuesday, so if you cannot come Monday make it Wednesday.

Mr. Thickens will pay your expenses from Harrisburg to New York, just the same as he will your expenses to San Francisco.

I believe that we have acted for the best interests of all concerned in this matter, and trust that you will agree with me.

Hoping to see you soon, I am,

BERT."

(Letter-head as before.)

“Harrisburg, Pa., Nov. 4, 1916.

Dear Bert:

The enclosed letter is rather short but I expect that you will show it to Thickers and that is why I did not say any more. The McMurtry interests cannot afford to have me go there as a witness for the U. S. Government but that is up to them. My decision is based on good grounds and regret cannot put same on paper at this time. Expect to leave here about the 14th but have not decided as yet whether I will go via Chicago or Washington. Let me know the plans of the boys, may be able to arrange to go with them. Let me know the final answer about the \$15,000 proposition. Will not wire my final answer to San Francisco until Wednesday of next week and that will give Thickers a chance if he wants it. Keep me posted.

Yours sincerely,
BASHORE.” [607—501]

(Letter-head as before.)

“Harrisburg, Pa., Nov. 4, 1916.

H. M. Walker,
New York.

Dear Bert:

Received your wire and both letters which have been noted very carefully. I have given this proposition serious consideration for the past week, been in consultation with my lawyer several times with the result that his advice and my conscience tell me to go to San Francisco as a witness for the

United States Government. At this time it would be impossible for me to come to New York next week on account of planning for the big trip but if Mr. Thickens wants to see me he knows where I am. That is all I will say at this time.

Yours very truly,
H. E. BAYSHORE."

(Letter-head as before, NIXON, WALKER & TRACY.)

"New York, Nov. 6th, 1916.

Mr. H. E. Bashore,
c/o Harrisburg Automobile Co.,
Harrisburg, Pa.

My dear Heb:

I received your letter of November 4th, and was indeed surprised that you had decided that you think it best to go as a government witness. If you go as a government witness you can only tell the truth, which is all that is wanted of you if you go as a witness for Mr. McMurtry. All that the government will want to know is were you satisfied. It appears that Mr. Thickens has a letter in his possession from you written when you were with Henry Sonneborn & Company in which you stated that you were very much pleased with the amount that you received, that you were surprised you received so much, which would certainly go to show that you were satisfied with the transaction and this is all that you would be expected to testify to except that you were an original locator.

It appears to us that your only chance, as well as

the rest of us, of getting a fair dividend, that we here believe we were entitled to, is for you to go as a McMurtry witness with the rest of the boys from here. If this is done it really appears to us as though a good portion of our just receipts will come back.

We know that you wish to make the trip to California, but we believe that it is wiser for you and more to your own personal interest to go as a friendly witness to the McMurtry interest than otherwise.

We are expecting a long letter from San Francisco Wednesday or Thursday that should have a great deal of information in it, and, as stated, believe that it would be best for you to go with our boys. Of course, you can do as you think best.

Kindly advise whether we can count on you being with us or not, for as we wrote you personally all of the money for expenses is in New York now.

Yours very truly,

BERT."

HMW/H. [608—502]

(Letter-head as before.)

"Harrisburg, Pa., Nov. 8, 1916.

Dear Bert:

Have been laid up with a bad cold since Saturday and that is why you have not heard from me more promptly. Unless I feel a whole lot better than I do now I would not take that trip out there under any circumstances. Did not expect that my last letter would cause any disappointment among you

all but now see how you read it. I know that you are so conscientious in all that you say and have done and firmly believe that every move has been well thought over and as far as you know for the best interest of all concerned. While we may have been satisfied we now know and feel that the McMurtry interests have made 'goats' out of us all—with that in mind I cannot warm up to any line of argument that they are going to hand out—I might be wrong, but that is how I feel about it. On the other hand they have never directly requested me to act as their witness; if they really wanted me they could have easily dealt with me direct which would have been much better than through you. If I should go as their witness I would feel like a 'puppy dog.' Those are my frank sentiments. I don't want you to think that I have any desire to be arbitrary nor do I want to do anything that is going to mar your personal interests in this matter and I have been just as conscientious about everything as you have. The Government have asked me to be their witness, they have told me what they would do in the way of remuneration, that much I know. If I should decide to act as their witness I am simply going to tell the truth and nothing else—I have no desire to fight this proposition or start anything—and my lawyer claims that my being a witness for the government under those circumstances would not in any way injure our future possibilities of McMurtry wins the suit. I remembered very well what I had written to Thickens, in

fact I have all the correspondence but it was no intention of mine to use this unless forced to do so.

By the time you get this letter you will have that long letter from San Francisco and I would appreciate your advising me the contents. It may help me to decide this knotty problem. In the meantime I will patiently wait. With kindest regards, I remain,

Yours very truly,
H. E. B."

(Letter-head as before, NIXON, WALKER &
TRACY.)

"New York, November 13, 1916.

Mr. H. E. Bashore,
Harrisburg, Pa.

Dear Heb:

Your favor of the 8th received and I am indeed very sorry that you have been laid up with a bad cold.

Nothing new developed, as yet, except that the trial has been postponed for one week from November 20th.

Mr. Thickers has not as yet received the letter that he stated has been forwarded, so we have nothing new to report. Just as soon as we hear anything of interest, we will advise you without delay.

Trusting that by this time you have gotten the better of your cold, I am with kindest regards,

Yours very truly,
BERT." [609—503]

(Deposition of Harry E. Bashore.)

I never was informed that my name with seven others had been used in making 39 placer mining locations in San Benito County, California, by L. B. McMurtry, acting under that power of attorney (Plaintiff's Exhibit 4), and never claimed any interest in any lands so located. The checks for \$250 each and a dividend check of the Pacific Oil Lands Company for \$20 is the only profit I ever received. This check dated January 8, 1914, is the one referred to as the dividend check. I also received from the Pacific Oil Lands Company a report to stockholders which I produce.

(This report, Exhibit 2, with this deposition, is similar to Plaintiff's Exhibit 35 with the deposition of Harry B. Thorn.) [610—504]

Cross-examination.

I bought stock from John B. Thickens in the Empire Oil & Development Company for which I paid \$95.00. After I was on the witness-stand in California I asked Searls to refund that money, but he did not do so; McMurtry was with him when I asked him. This certificate for 200 shares of stock of the Empire Company is dated May 24, 1907. I received it from Thickens May 25, 1907. It was signed L. B. McMurtry, President, and C. Wesley Thorn, Secretary. At the time I signed this power of attorney (Plaintiff's Exhibit 4), Thickens came to my office in the Knickerbocker Building, and said that McMurtry wanted to go to California and locate oil lands and had to have a power of attorney, and that this power of attorney he would have to have signed,

(Deposition of Harry E. Bashore.)

and showed me the line where to sign it, and that I would not be involved in any way, shape or form. I asked him whether it was right for me to sign it, and whether I had a perfect right to sign it, as I did not want to do anything except what was right. I read it and knew it was a power of attorney. After signing it, I don't recall talking to any one about having signed it, though probably did. May have joked with some of my coemployees before I left New York about the possibilities of land being located—nothing about making money out of it. I never figured about making any money. None of the employees of Nixon & Thickens conferred with me about it. Nixon moved into another building and went on with the business and I was a competitor and didn't meet these employees often. Didn't know McMurtry when I signed that power. From the time I associated myself with Nixon & Thickens I heard a good deal about him. Nixon and Thickens kept in very close touch with Mr. McMurtry, and I don't just remember how long it was *eh*tn it seemed that the Empire Oil proposition was going to be a failure and Mr. Thickens kept in touch with Mr. [611—505] McMurtry. When Thickens sold me that stock in the Empire Company I didn't hear what his interest was concerning it. When he asked me to sign that power of attorney he didn't tell me how he or anybody was going to be benefited that I recall. I never expected to get a cent out of it. Thickens said it would help McMurtry. Never brought himself in it. He said McMurtry was

(Deposition of Harry E. Bashore.)

practically down and out, and in order to assist Thickens to aid McMurtry I signed the power of attorney. I never felt that Thickens was going to be benefited. Yes, Thickens said that if McMurtry made good he would take care of us, but I paid no attention to the remark. Never expected to get anything out of it. I read every paper I signed, and before I signed on the back of that check on which I signed away all my right and interest I telephoned Mr. Nixon and asked his advice, and he said, "When you get something for nothing, what's the use to stand out." That was after I received the report of the Pacific Oil Lands Company and after I signed the ratification. Had no intention when I signed that power of attorney to aid Thickens or McMurtry to cheat or defraud the Government.

Redirect Examination.

When I was in San Francisco the second time I had a conversation with Searls and McMurtry. Searls told me that all the other parties had received all their money back for their stock in the Empire Company, that some money had been set aside to pay for all of the outstanding stock and didn't understand why I had not been so informed, and requested me to send back my stock for payment. [612—506]

Deposition of Wellington F. Christman, for Plaintiff.

WELLINGTON F. CHRISTMAN, called April 4, 1917, by plaintiff, testified by deposition as follows:

Am a resident of Clinton, Wisconsin. Visited in New York in 1902. Have not been there since. I did not sign that power of attorney (Plaintiff's Exhibit No. 6) and was not in New York in December, 1907, nor did I appear before Commissioner of Deeds, George F. Handel, of the city of New York on the 19th day of December, 1907, or at any other time. I signed a paper that John Thickers brought to me, which was something about some land in Kern County, California. The first I heard of this matter was in a letter I received from John C. Thickers, in which he sent me a paper which he wanted me to sign. That was some four or five years ago. I have not the letter and don't know where it is. This letter stated that if I would sign these and send them back I would receive about \$250. That paper (Plaintiff's Exhibit No. 1, with the deposition. Ratification dated Sept. 10, 1910, similar to plaintiff's Exhibit 1 with the deposition of Frank B. Chapman) is the one I signed and acknowledged before F. W. Herron, Notary Public. That was the paper that Thickers brought to me to sign. A week or ten days before signing that paper I signed a similar one which I received from Thickers, but did not acknowledge same before a notary public. After depositing the first paper which I signed in the postoffice, I reclaimed it and

(Deposition of Wellington F. Christman.)

tore it up. I signed my name William F. Christman on this paper (Plaintiff's Exhibit No. 1), for the reason that Jack Thickens came to my house with the paper in his hand and said he wanted that signed and that if I would sign it I would get \$250.00 and maybe more, and after consulting with a lawyer in Clinton, and the President of the Citizens National Bank of Clinton, and being advised by them that there was nothing in that paper that would interfere with me or do any [613—507] harm, I finally signed it. I told Thickens that he knew my name was Wellington, but he says, "If you change that it will make a difference with us. We want this paper to go through straight. If you should sign that Wellington F.," he says, "sign it William F.," and I didn't think it would make any difference. I am called William right there in our own town lots of times, and I am called Bill, and I tell them that I won't answer to Bill; but I will to Will or William or Wellington. My name is Wellington. John Thickens is my wife's brother's son.

Q. When was the next time, if you ever did, sign any other paper, if any papers were presented to you to be signed? A. Now, I am not sure whether he left me, I won't tell that, after he paid me the money, he paid to me some money, and I signed a receipt for it, that I signed in the Citizens Bank, before no notary public, understand. He said that he wanted that to show that he had paid me this money.

United States
²
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN THREE VOLUMES.)

THE UNITED STATES OF AMERICA,
Appellant,
vs.

CALIFORNIA MIDWAY OIL COMPANY, ASSO-
CIATED OIL COMPANY, COLUMBUS
MIDWAY OIL COMPANY, 32 OIL COM-
PANY, L. B. McMURTRY, J. M. McLEOD,
and STANDARD OIL COMPANY,
Appellees.

VOLUME III.
(Pages 705 to 951, Inclusive.)

Upon Appeal from the United States District Court
for the Southern District of California,
Northern Division.

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.
(IN THREE VOLUMES.)

THE UNITED STATES OF AMERICA,

Appellant,

vs.

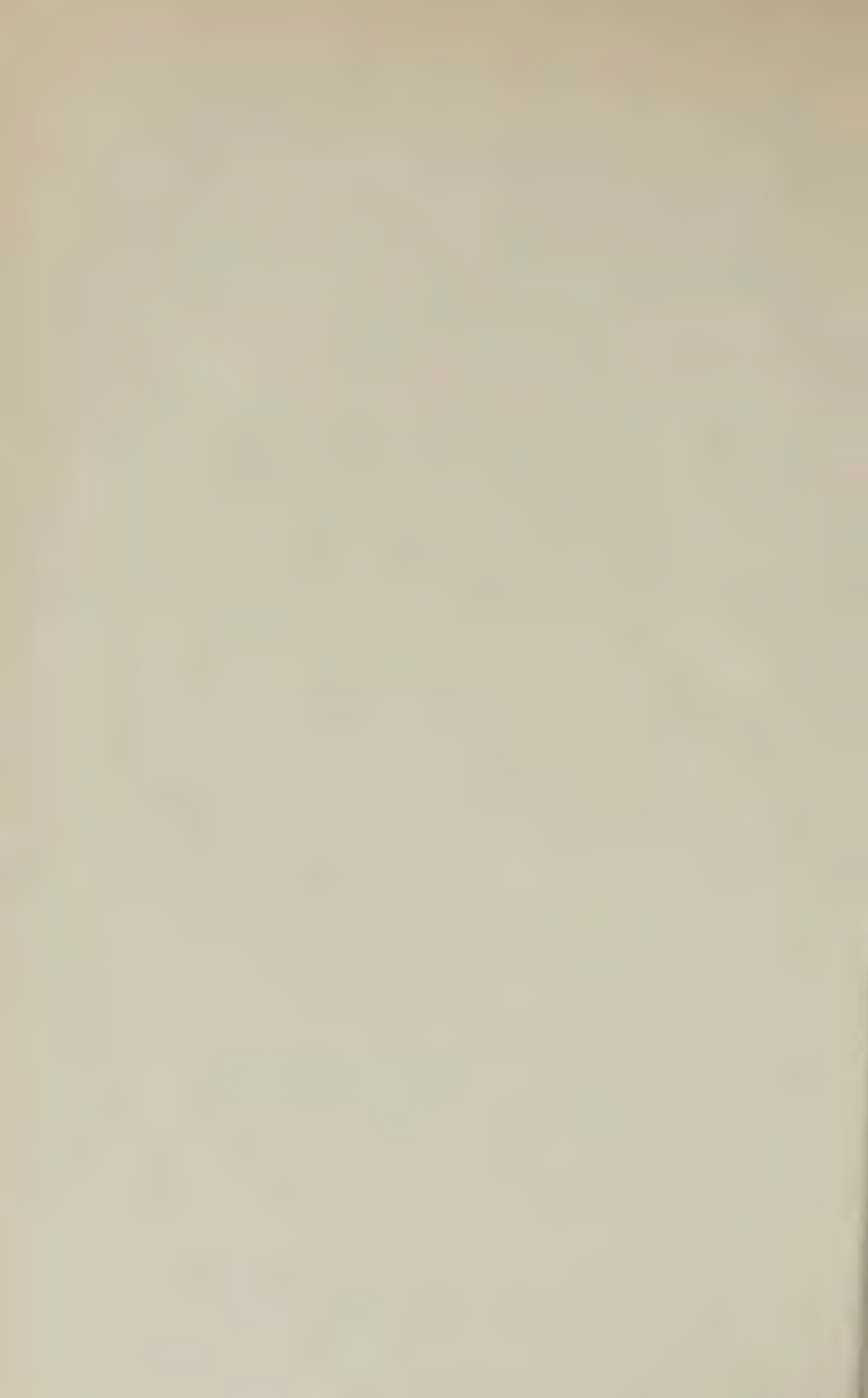
CALIFORNIA MIDWAY OIL COMPANY, ASSO-
CIATED OIL COMPANY, COLUMBUS
MIDWAY OIL COMPANY, 32 OIL COM-
PANY, L. B. McMURTRY, J. M. McLEOD,
and STANDARD OIL COMPANY,

Appellees.

VOLUME III.

(Pages 705 to 951, Inclusive.)

Upon Appeal from the United States District Court
for the Southern District of California,
Northern Division.



(Deposition of Wellington F. Christman.)

He paid me \$500 at that time. At the time I signed this first paper for him he left me some shares of stock. It was in the Kern County Land & Oil Company or Pacific Oil & Land Company. Cannot say how many shares he left me, but he said, "Uncle Will, that will be worth \$500 to you some time." I thought he was joking. I didn't expect to get a cent out of it. If he had been any other man in God's world I never would have gone into it. He was a nephew, my wife's brother's son. I supposed he was sincere and honest. He says, "I wouldn't get you into any trouble." He says, "I sent in the Hatch boys' names, and Tom Bailey's name." That is my mother's brother's name. Don't remember signing any other paper in connection with this matter after signing the receipt for \$500.00 in cash which Thickens gave me. (Plaintiff offers in evidence a check in words and [614—508] figures as follows, to wit):

"No. 167. New York, Sep. 11, 1911.

SECOND NATIONAL BANK,

of the City of New York,

5th Ave. and 28th St.

Pay to the order of Wm. F. Christman Two hundred and fifty Dollars.

\$250.00/100

F. H. SEARLS."

(Endorsed as follows): "Received from L. B. McMurtry \$250.00 in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made

(Deposition of Wellington F. Christman.)

by myself and others to said L. B. McMurtry bearing date the 19th day of December, 1907.

WM. F. CHRISTMAN.

C. W. THORN.

F. H. SEARLS.

Sep. 30, 1911.

Received payment through the New York Clearing House. Second National Bank of the city of N. Y.

Endorsement guaranteed

W. M. PABST,

Cashier, 03798''

Mr. HALL.—Q. You never signed that check?
A. I never did.

I never signed such a statement as appears on the back of that check just read and never received \$250. I received \$500. This paper similar to Plaintiff's Exhibit No. 1 which I destroyed after signing it, and Plaintiff's Exhibit 1, and the receipt of the \$500.00, are the only papers I recall ever signing in connection with this matter. No, at the time I signed Plaintiff's Exhibit No. 1, I did not know that any land had been located in Kern County, California, in my name. Was never advised by [615—509] anyone that I and seven others had located the SW.¼ of Section 34, in township 31, range 23, in Kern County, California, as the Iowa Placer Mining Claim, on January 1, 1909, or that I and others had located any other placer claims in Kern County, California, or anywhere else.

Q. The records, I believe, of Kern County show

(Deposition of Wellington F. Christman.)

that the four claims that I have mentioned, namely, the Iowa, Vermont, New York, and Michigan, were located on January 1, 1909, by Francis E. Pratt, J. C. Thickens William F. Christman, T. R. Bailey, Hamlin Hatch, Mark W. Hatch, Walter Wilson and J. E. Farrell, by their attorney in fact L. B. McMurtry? A. No, sir. No, I never authorized McMurtry to act as my attorney in fact in making these locations. I never saw him. Don't know anything about it. This paper which I signed and put in the mails and then took out and destroyed is the only paper that I ever signed in connection with this matter prior to the signing of Plaintiff's Exhibit No. 1. No, I never had any intention on January 1, 1909, of locating for my own use or participating in any locations on public lands in the State of California or at any other time, nor did I have any intention at that time or any other time, to participate in those four locations named or claim any benefit by reason of those locations having been made. Only what John Thickens told me, that they would be worth probably \$250 to me when I signed that paper.

Q. The records of Kern County show further that your name appears as a locator, along with seven other people, upon the following list of mining claims, and I will read off of the list: Mischief No. 4, Mischief No. 5, Mischief No. 9, Louisiana, Paradox, St. Anthony, Anheuser, Weiss, Napa, Elite No. 10, Elite No. 18, Elite No. 22, Elite No. 29, Elite No. 31, [616—510] Elite No. 39 and Greenwich,

(Deposition of Wellington F. Christman.)

covering various lands in California. A. No, I never intended to have any interest in any of those claims or lands.

Q. Did you know at the time you signed this paper which has been marked Plaintiff's Exhibit 1, that Mr. L. B. McMurtry was about to sell to William F. Herron and others the several tracts of land which had been covered by the Iowa, Vermont, New York or the Michigan claims? A. No, sir, I never knew anything about it.

No, I never have since learned a word about it all. I know nothing about it no more than a dead man, not one bit more. I never heard from Jack Thickers since he left me that \$500, and that is four or five years ago this spring. That is the only paper that I ever signed or know anything about, except the one I told you about, the receipt. I never signed the receipt for Certificate No. 36 for 1,000 shares of Pacific Oil Land Company stock, dated December 16, 1911. I never signed any such paper nor did I sign the assignment on the back of the certificate. Yes, I had that certificate of stock. I had a bundle of certificates. I don't know the numbers. I surrendered these certificates to Thickers when he paid me the \$500. Never saw McMurtry and Thickers never told me of any contracts made by McMurtry under any power of attorney from me. The man who brought this paper to be signed was John B. Thickers, who is the son of John Thickers, and he is the only one that said a thing to me about the land in California, except the Hatch boys. I got a

(Deposition of Wellington F. Christman.)

letter from Hamlin Hatch three or four years ago who wanted me to go in and start a suit against Mr. McMurtry to get some more money out of him; and I said I would have nothing to do with it. [617—511]

Q. I again refer to Plaintiff's Exhibit No. 1, and ask you to tell me why you signed and executed that paper. A. Because he told me I was going to get \$250, that is why.

Yes, that is the only reason. I never expected to get a cent through the mining stock or anything else. I thought that when he got ready to pay me \$250 I would take it. When he gave me these shares of stock, he says, "Uncle Will, they will be worth probably \$500 to you some time." I took the stock and put it in the safety deposit box in the bank with the rest of my papers. Then he came out here to Wisconsin. He had been to Kansas to see Mr. Hatch, he said. I don't know if he was down there. I don't know whether he paid any money or not. He didn't say. And then he came to my house about this matter. Now, he says, "I want them shares of stock." I said "Why?" He said he wanted to take the train for Chicago that night, that he was in a hurry. I said, "The bank is locked up, and we can't get in until nine o'clock to-morrow morning." He says, "Then I will have to stay over." He says, "I am awful busy; I have to take that train." I says I couldn't deliver the papers to him until I could get in the bank. The bank was opened at nine o'clock, and the train went at nine

(Deposition of Wellington F. Christman.)

forty-five, and he was in a hurry. We went down there and took out the stuff, those shares. I don't know what they were. At any rate they were stock of some kind. I couldn't tell you one word that was on them. I can only tell you that there was the Pacific Land & Oil Company on there. I noticed that on the head of some paper. The others I didn't pay any attention to. I didn't think it amounted to a damn, anyhow. I got this money, and I took it and I spent it, and that is all there is to it.

Q. You never claimed any interest in any of the lands [618—512] since then? A. No, sir. I told you before he wanted me to sign William F., and I done so to please him, and that is all. I scolded him like the devil for signing the name in that way, for using my name, and then giving a power of attorney to use it. I suppose they located this land under that power of attorney. Whether they located it or not I don't know. I never seen that receipt, or signed any of those things, there, either.

Cross-examination.

One of my daughters married Hamlin E. Hatch and they lived in New York City for two or three years, from which place she came home to live with me some eleven or twelve years ago, and is still with me. Yes. John C. Thickens and John B. Thickens both were alive and living in New York when my daughter Emaline came to live with me after she separated from her husband, Hamlin E. Hatch. I generally signed my name W. F. Christman, but my

(Deposition of Wellington F. Christman.)

full name is Wellington F. Christman, Jack Thicken's mother was at my home a year ago last summer—1915.

Yes, I signed that paper (Plaintiff's Exhibit No. 1).

Q. What name did you use in signing such paper.

A. I was going to write my name Wellington F. Christman or W. F. Christman. Q. I asked you what name you signed, not what you were going to do. A. Well, he told me, he says, sign it William F.

Yes, I gave my permission to act or I wouldn't have signed the paper. No, I didn't intend to fraud or cheat the Government or permit McMurtry or anyone else to do so. I didn't suppose there was any fraud to it. No, neither John Thicken or anyone else told me that they wanted to borrow my name for the purpose of getting land for somebody else. He wanted to get located those lands so they could drill and get oil out of it. [619—513] Yes, according to my recollection, Plaintiff's Exhibit No. 1, the same paper which I signed and then tore up, and the receipt that I gave Thicken at the time he gave me the \$500 are the only papers I ever signed in connection with this matter. I don't recall signing the receipt for this stock. (Defendants' Exhibit No. 4 offered and read in evidence as follows:)

Defendants' Exhibit No. 4.

“September 16, 1911.

“Received of L. B. McMurtry 1,000 shares of the
PACIFIC OIL LANDS COMPANY in full of all

(Deposition of Wellington F. Christman.)

claims and demands growing out of power of attorney given by me to him of date December 19th, 1907.

“WM. F. CHRISTMAN.

(Endorsed as follows:) “Clinton June., Rock Co., Wis.”

No, I didn't know this certificate had been issued in my name. Thickens didn't show that to me. I had them in my possession about a year and a half or maybe longer. Never looked at the papers after I put them in the box until I took them out to give them back to Thickens. Yes, I am positive that all I did was to deliver the certificates to Thickens, and that I didn't put my name on the back. I can't tell how many shares in that company I delivered. Never heard anything more about this. Never had any papers or money from the Pacific Oil Lands Company, only what Thickens paid me.

Q. Never got a check from them? A. Wait a minute. The postmaster says to me one day, he says, “I got a letter here,” and he read it to me, didn't show it to me, I didn't get it in my hand, it said something about the Pacific Oil Lands Company, and wanted to know if there was a William F. [620—514] Christman got his mail there in 1913 or 1914 at Clinton. I know the postmaster, knew him before he was born, have known him ever since he was born, ever since he was a baby. I says, “You can tell them that there is no William F. Christman here, but there is a Wellington F. Christman.” And he read something about the Pacific

(Deposition of Wellington F. Christman.)

Oil Lands Company. I think it was something pertaining to this case, and that is all I heard.

Yes, I am absolutely sure I never got any money or check of any kind from the Pacific Oil Lands Company or anybody connected with it after Thickenens gave me this money.

(Being shown Defendant's Exhibit 5, the same being a check dated San Francisco, January 8, 1914, for \$20, payable to Wm. F. Christman and signed Pacific Oil Lands Company by J. E. Harrison, Secretary and Treasurer and L. B. McMurtry and endorsed Wm. F. Christman.)

I never received that check and never signed it.

Q. After having answered the last question you requested me to wait a moment, and then you made some remark to the effect that there was some faint recollection in your mind that you might have received something. Will you now go on and tell just exactly the state of your mind as to the subject matter we are talking about? A. It seems to me now after you have pressed it so thoroughly upon me that I did get twenty dollars from that bank. Q. And that you did get a check? A. I think so.

It seems to me, since you have said so much about it, I did get twenty dollars from them. Again looking at the signature on that check I think that is all right.

(Defendants' Exhibit No. 5 offered and read in evidence as follows:) [621—515]

Defendants' Exhibit No. 5.

San Francisco, 1-8, 1914 No. 1198.

Clearing House No. 1.

THE BANK OF CALIFORNIA,
National Association,
San Francisco.

11-1

Pay to the order of Wm. F. Christman \$20.00—
Twenty and 00/100 Dollars.

PACIFIC OIL LANDS CO.
F. J. E. HARRISON,
Secy. & Treas.

L. B. McMURTRY,
Vice-pres.

(Endorsement as follows:)

Wm. F. Christman
8 M. 8

All prior endorsements guaranteed

FIRST NATIONAL BANK OF CHICAGO

2-1—Jan. 16, 1914—2-1

H. A. Howland, Cashier.

Pay to the order of
First National Bank
of

CHICAGO

(All prior endorsements guaranteed)

CITIZENS BANK,
79-486 Clinton, Wisconsin,
H. A. Moelenpah, Cashier.

(Perforated:)

PAID

(Deposition of Wellington F. Christman.)

I still have no recollection of signing the receipt for stock certificate No. 36 of the Pacific Oil Lands Company dated December 16, 1911. No, my memory is not very strong. I forget things often, more so since I had this trouble in my head. Have a ringing in my head all the time. No, I have never said anything to my nephew about imposing on me in these [622—516] transactions. I got this \$20.00 before I got the \$500.00, but I had forgotten all about that. I don't know how I got the \$20.00, whether it was a check or not.

Q. Now, I want to show you a piece of paper which is entitled "Pacific Oil Lands Company First Report to the Stockholders." It is not true that you received a copy of that sheet of paper with that check of twenty dollars? A. No, sir, I did not receive any such thing as that. Q. You are absolutely positive about that? A. Yes, sir.

Redirect Examination.

It was about a year or a year and a half between the time Thickers brought me this paper which I signed and the time he took up the stock certificate and gave me \$500. No, nothing was said at this second visit about what amount of oil lands my name had been used in locating—not a word. He spoke about paying this money. I said, "Gentlemen, where is the money coming from to pay?" He says, "We have leased enough land to pay for it." I can't say who he meant unless it was the company. [623—517]

Deposition of Emaline Hatch, for Plaintiff.

EMALINE HATCH, called by plaintiff April 4, 1917, testified by deposition as follows:

I reside at Clinton Junction, Wisconsin. Was formerly the wife of Hamlin E. Hatch. Think I was residing in Clinton with my father, Wellington F. Christman in December, 1907. No, he didn't go to New York during that month. I would have known it if he had. [624—518]

Testimony of George A. Meinecke, for Defendants.

GEORGE A. MEINECKE, called February 25, 1919, by defendants, testified in open court as follows:

I reside at 135 Overlook Street, Mount Vernon, New York; have resided in New York all my life. Am employment manager of the Underwood Type-writer Company.

Q. I hand you a paper that is a certified copy of the power of attorney which is recorded in Book 10 of Powers of Attorney, page 13, Kern County, California, records (Substance of Plaintiff's Exhibit 5 stated) and ask you whether you signed the original of that power of attorney in New York in December, 1907 or not. A. Yes, sir.

Yes, I read it at the time. No, there was no conversation between myself and anybody else to the effect that I was signing that paper for the benefit of anybody other than myself and the locators, and there was no statement to the effect that I would ever be called upon to transfer my interest in the

(Testimony of George A. Meinecke.)

lands that were located to anybody else. No, I never attempted to modify, set aside or ratify that power of attorney.

(Witness shown photographic copy of ratification.) That ratification bears my signature and I read it when I signed it and delivered it to C. W. Thorn. (Said ratification is similar in form to Plaintiff's Exhibit 1, with the deposition of Frank B. Chapman, and purports to have been signed August 16, 1910.)

The notary before whom that was acknowledged was assistant manager in New York City. Yes, I noted at the time of signing this ratification the statement therein, "I hereby ratify, approve and confirm those certain contracts of sale made for me [625—519] and in my name by L. B. McMurtry as attorney in fact with W. F. Herrin, et al., etc. No one ever told me that the intent and purpose of that power of attorney was to enable anybody to obtain a greater quantity of land than the law allowed or to defraud the Government or anybody else. No one ever asked me at any time to execute any conveyance of that property prior to making the locations or prior to the execution of the ratification or at any other time.

Cross-examination.

I talked over the signing of this power of attorney with Mark Hatch, Powell and C. W. Thorn, but am not sure just which one asked me to sign it. Believe Powell first broached the subject. Was never a stockholder in the Empire Oil & Development Com-

(Testimony of George A. Meinecke.)

pany. The signing of this power was first mentioned, I think, a week or two before I signed it. It was for the purpose of locating oil lands in California with the object of drilling for oil. McMurtry was to do the drilling and the locators were to be interested in the lands. No, nothing was said by either Powell or Thorn about these locators all being interested in the Empire Oil Company.

Q. Was there anything said by Thorn to you to the effect that Mr. McMurtry was about to make an attempt to locate some new oil properties and pay back the stockholders who had invested their money in the Empire Oil & Development Company?

A. That, as I understood, was McMurtry's intention for going into the developments. Q. And Thorn

told you that, did he? A. Mr. Thorn told me that.

Q. You understood that before you made the location—or before you signed the power of attorney?

A. I wouldn't say just when it was, but it was at or about that time. [626—520]

No, I did not sign that power as an accommodation to Thorn and McMurtry more than for any other reason. My reason for signing was to acquire an interest in oil lands. I never knew definitely how, but I knew that I would have a one-eighth interest with these others who were on my power. Had no definite knowledge as to the number of locations that would be made. At that time I supposed it was one. I did not know when I signed that ratification in 1910 how many locations had been made in my name or in 1911.

(Testimony of George A. Meinecke.)

Yes, I received stock in the Pacific Oil Lands Company after I signed this power of attorney; from Thorn. The reason given was that it was my share in the lands that had been located. No, I did not know how many locations had been made. Yes, I made inquiry; inquired of Thorn but did not find out. He said McMurtry was working and developing the lands that had been located. Did not ask him how many particular quarters had been located. Have no recollection of that. It never crossed my mind if I thought I was only entitled to one. I never had any other thought until I came here in 1916. Can't say I ever gave it any [627—521] thought. In my mind possibly I figured that I was entitled, as a citizen, to a location, but what it meant, how much, or how it was done, I was not sure. No, until I came to California in 1916, to testify in the former trial I had no knowledge as to what my rights were under the mining laws. I relied upon McMurtry and got my information from Thorn, Powell and Hatch. Yes, I received \$250 at one time. Thorn gave it to me; I think it was in November, 1914. No, I did not receive two checks for \$250. Did not receive any money at the time I signed the ratification but I received a check. (Photographic copy of check dated September 11, 1911, exhibited.) That is my signature on the back of that copy.

Q. You observe there the typewritten matter, which is as follows: "Received from L. B. McMurtry \$250, in full payment for all my right, title and interest in and to all lands located by L. B. Mc-

(Testimony of George A. Meinecke.)

Murtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 21st day of December, 1907." Was that typewriting which I have just read upon the back of the check when you affixed your signature, "George A. Meinecke," thereto? A. I have no recollection of that at all.

If that typewriting was there when I signed I must have read it. By reason of signing that I received 1000 shares of the Pacific Oil Land Company's stock and 750 shares of the Columbus Midway. Mr. Thorn gave this stock to me. The Pacific Oil Lands Company stock was given me as my shares in the land that had been located in my name. Yes, I inquired of Thorn but did not learn. I never knew any of the details at all and made no inquiry of anyone else. Yes, I remember the ratification. Thorn presented it to me. I read it and signed it. Yes, I made [628—522] inquiry of Thorn as to what that contract mentioned in the ratification was. Only found out from him that it was a contract in prospect. Did not write McMurtry about it or make inquiry of Herrin and others. Did not know who they were. No, did not ascertain what the nature and purports of the contract was—not at that time. The only person I inquired of concerning this prior to January 1, 1914, was Thorn. He would come in and see me continually. He lived at Little-town, and whenever he came to New York he seemed to drop into the office, and after he gave me the 750

(Testimony of George A. Meinecke.)

shares of Columbus Midway stock his visits were more numerous, and I remember he would bring me long newspaper clippings of the progress of the oil fields. His intent was to sell me more of that stock. Yes, I signed a proxy—signed one or more proxies, but I don't recall the names. C. W. Thorn presented them to me. He is the only one that ever came to see me about these matters. This proxy of August, 1913, was brought to me by Thorn. Whenever he brought any paper to me to sign he always had another person with him who he said was the notary. Don't know that I would recognize him as I didn't know him. No, I did not receive any communication from the Pacific Oil Lands Company in December, 1913, in regard to these transactions. Believe Thorn presented to me a paper calling for the consent to the distribution of certain assets of the company and I signed it and afterwards received a check for \$20 from Mr. Thorn. No, nothing else was presented to me at that time by Thorn. No, no statement of the condition or resources of the company was then presented. The first I ever remember seeing that paper was in 1916. This \$20 dividend was the only dividend I ever received.

Q. Now, how soon after that, when Thorn delivered the \$20 [629—523] check to you, did you hear anything more about this oil land transaction?

A. Mr. Thorn came in continually, as I say. He dropped in there for a few minutes, possibly, leaving a pamphlet or telling me something about another oil well that had gone wrong, or something of that

(Testimony of George A. Meinecke.)

kind, and moved on. I was very busy at that time—very much overworked.

The circumstances concerning the disposal of my stock in the Pacific Oil Lands Company were: Mr. Thorn came to see me and told me that—or, rather, in his previous visits he was always telling me more about the Columbus Midway and the wells that were sinking and the prospects in that regard, but he never knew anything about the Pacific Oil Land Company's properties, except that, in a general way, things were going from bad to worse, and in my conversations I remember, when I received the \$20 check, I told him it would come in very handy. But when he came back at a later date and gave me \$250—or rather offered to take up the Columbus Midway stock for \$250—He came and offered to purchase the 750 shares of Columbus Midway for the \$250, which he had promised he would do when he asked to take it, in lien of the cash, when he presented the first check for \$250, [630—524] and as sort of an afterthought he said to me, "If you would like to dispose of your 1000 shares of stock I will take that up also for a like sum." Q. That is the thousand shares of stock of the Pacific Oil Lands Company? A. Yes. Q. And did you let it go? A. I asked him if that was all it was worth, or words to that effect, and he told me that under the circumstances I could continue to draw \$20 a month. But he never explained to me why I had not received more than the one \$20 check. Q. Well, did you let your stock go at that time for \$250? A. I let the

(Testimony of George A. Meinecke.)

stock go for \$250. Q. And you signed the certificate on the back and delivered it to Mr. Thorn? A. Yes.

No, I never received any money or thing of value afterwards by reason of this power of attorney executed in December, 1907. Never received any stock in any other corporation or any other money or dividends. No, at the time I parted with this certificate of stock in the Pacific Oil Lands Company I did not know how many location notices had been pasted in California upon which my name appeared. No, I made no inquiry as to that. I don't think the thought ever occurred to me of obtaining more than the one. The only thing I knew about the capitalization of this company at the time I surrendered my stock was what the certificate showed. That was printed one million. No, I did not know who the shareholders of stockholders were, "Except that my understanding of it was that it was the thirty-two locators. I was told that each had given to them the same as I received. Who received the other 968,000 shares I do not know. That was what I wanted to know but never found out. Thorn was the only one I inquired of. Yes, J. McG. Williamson called on me at my office in New York City on April 24, 1914, and also at my house the evening before. Yes, I then signed a written statement to [631—525] which I was sworn. (Typewritten paper shown witness.) Is that the paper that you swore to?

Mr. HALL.—We offer it in evidence.

(Testimony of George A. Meinecke.)

Mr. ACH.—It is objected to as incompetent, irrelevant and immaterial and not proper cross-examination.

The COURT.—I think it can be used for the purpose of impeaching the witness.

Mr. ACH.—He has got to call the witness' attention to any statements that are at variance and give him an opportunity to explain what they are.

Q. (By Mr. HALL.) I asked you on your cross-examination whether you had signed the paper more as an accommodation to Mr. Thorn and Mr. McMurtry than for any other reason. I now read to you from the affidavit. Did you not state in the affidavit: "The powers of attorney were signed more as an accommodation to Thorn and McMurtry than for any other reason."? A. That is what the document says there, but those are not my words. Q. Now, is it not a fact that that affidavit, in the form it is now in, namely, typewritten upon two sheets of paper, was typewritten at your suggestion by one of your employees in your office in New York? A. This document was typewritten by my stenographer in my office from a page presented by Mr. Williamson. Q. And is it not a fact that you had read over that written page presented by Mr. Williamson prior to the time our stenographer typed this in your office in New York? A. That I am not sure of. Q. Is it not also a fact that prior to the time your stenographer typed this typewritten matter that you said to Mr. Williamson, in substance and effect, that it was remarkable

(Testimony of George A. Meinecke.)

that he could get your language down so exactly?

A. I don't recall making any statement of that kind. Q. (By Mr. HALL.) Well, [632—526]

did you or did you not make such a statement?

A. I cannot recall now, so I cannot say whether I did or not. Q. (By Mr. HALL.) Well, will you

say now what your recollection is, after it has been refreshed by seeing this paper, as to whether or not you made such a statement?

Mr. ACH.—That is objected to as without predicate. He has not stated that that paper refreshed his recollection. He said these were not his words.

Q. (By Mr. HALL.) Well, does this typewritten paper now refresh your recollection after I have read to you what I have from it as to the fact—if it be a fact—that you did or did not say to Mr. Williamson that it was quite remarkable that he could get down your exact language so accurately. A. I have no recollection of making that statement, no. Q. You made this statement also in the affidavit, did you not: "Some time afterwards Thorn came to me and said that McMurtry was about to make an attempt to locate some new oil properties and pay back the stockholders who had invested their money in the Empire Oil & Development Company"? You made that statement, did you not, in the affidavit I have called to your attention? A. That was in the statement presented by Mr. Williamson, yes, sir. Q. Did you make that statement prior to the time that you signed this affidavit to Mr. Williamson? A. I possibly

(Testimony of George A. Meinecke.)

told him that that was Mr. McMurtry's idea of getting the powers of attorney. That was not my idea. Q. Was it your idea at the time you signed the power of attorney that Mr. McMurtry was getting those powers of attorney for the purpose of locating some oil land and paying back the stockholders who had invested their money in the Empire Oil & Development Company? A. My understanding was that by getting these locators to sign these powers of attorney Mr. [633—527] McMurtry would secure a new occupation, as it were, the old affair that he was in having—well,—

Mr. ACH.—Gone by the board?

A. Gone by the board, or failed, or whatever you might say. And that by reason of his acting for us he was to put himself as well as ourselves in line for making money. Q. (By Mr. HALL.) Now, I have already read to you this sentence “The power of attorney was signed more as an accommodation to Thorn and McMurtry than for any other purpose.” Is that statement true or untrue? A. It is true to this degree—that I considered it a favor to permit anybody to use my name in the broad sense that that paper purported, with such a slight knowledge of Mr. McMurtry.

Mr. HALL.—I will offer this paper in evidence.

The COURT.—I don't know that *you* entitled to offer it in evidence over the objection of the defendant. You may use it for the purpose or contradicting the witness, and you have asked him about that.”

(Testimony of George A. Meinecke.)

No, I was never called upon to expend any money in the development of any of these lands upon which my name appeared as a locator.

Redirect Examination.

Yes, during the conversation with Mr. Williamson April 25, 1914, I handed him a copy of a letter addressed to Hamlin E. Hatch on the subject of these locations in connection with the statement contained in the affidavit to the effect: Attached hereto is a copy of a letter sent by me to Hamlin E. Hatch, which explains in detail my transactions with the Pacific Oil Lands Company.”

Mr. ACH.—I offer that letter in evidence.
[634—528]

Mr. HALL.—I have no objection if the affidavit which forms part of it goes in.

Mr. ACH.—It doesn't make any difference whether the affidavit goes in or not.

The COURT.—It is referred to in the affidavit, is it not?

Mr. ACH.—Yes.

Mr. HALL.—And it was attached to it.

Mr. ACH.—It isn't attached now.

The COURT.—Well, it was.

Mr. ACH.—It evidently was; yes.

The COURT.—I think you had better offer the whole thing.

Mr. ACH.—Is the letter admitted?

The COURT.—Yes, but I think you ought to offer them both together.

(Testimony of George A. Meinecke.)

Mr. HALL.—Is the affidavit offered in connection with the letter?

Mr. ACH.—No.

Mr. HALL.—I object to it as incompetent, irrelevant and immaterial.

The COURT.—The objection is sustained. The letter is not admitted without the other part of it.

Mr. ACH.—The letter is not admitted?

The COURT.—No.

Q. (By Mr. ACH.) Now, at the time you had an interview with Mr. McG. Williamson did you say anything to him about any other paper that would explain your relation to the Pacific Oil Lands Company and these locations at all?

A. I told him that the language—

Mr. HALL.—Just a minute. Answer that yes or no. A. Yes. [635—529]

Q. (By Mr. ACH.) What did you say to him?

Mr. HALL.—I object to that.

Mr. ACH.—I am entitled to the whole interview.

The COURT.—You are entitled to that.

A. I told him that the wording of his affidavit was not my exact understanding, but that if he would make my letter to Mr. Hatch a part of it I would sign it, and he agreed. Q. (By Mr. ACH.) And was this letter which I now hand you the letter referred to (handing paper to witness)? A. Yes, sir. Q. And did you hand that letter to Mr. McG. Williamson at the time?

Mr. ACH.—I now offer it in evidence.

Mr. HALL.—I object to it unless the whole affidavit goes in.

The COURT.—The witness has now testified that it was made part of the affidavit. He said *he said* he would sign the affidavit if he attached the letter to it and made it a part of the affidavit.

Mr. ACH.—Do I have to attach the affidavit to it, your Honor?

The COURT.—I think the entire matter should go in.

Mr. ACH.—All right, if your Honor thinks so. I have no desire to draw the shade upon any light that your Honor may obtain upon these transactions of any kind or character, but at the same time my friend Mr. Hall frequently speaks about the “oil game,” and there is one game in the law, and I think I am entitled to this letter under the subsequent foundation as a part of the conversation.

Mr. HALL.—I am willing that all or none of it should go in.

The COURT.—Very well.

Mr. ACH.—I will read this whole affidavit, then, your Honor, with this letter so that it will be before the court.

(Affidavit read by Mr. Ach.)

Mr. HALL.—I thought you offered it all.

Mr. ACH.—No, I said I had no objection to its going in them [636—530] and I would read it for you. I am not offering the affidavit.

Mr. HALL.—The record shows you did offer it. But I will let it stand that way.

Mr. ACH.—I said to the Court that I was perfectly willing it should go in; that I did not desire to pull a shade over any light and so forth.

State of New York

City of New York,—ss.

George A. Meinecke, of lawful age, being duly sworn deposes and says:

I reside at 174 Archer Avenue, Mount Vernon, N. Y. but my business address is c/o Underwood Typewriter Co., No. 30 Vesey St., New York City.

I am the same George A. Meinecke who some years ago, probably in 1907, executed some powers of attorney authorizing one L. B. McMurtry to locate oil lands in California in my name. The execution of these powers of attorney came about in this way.

Through one Edwin L. Powell, who had been an employee of the Underwood Typewriter Co., I had become acquainted with L. B. McMurtry and with C. W. Thorn. These men were all interested in an oil company operating in California, known as the Empire Oil & Development Co. Thorn and Powell had frequently solicited me to buy stock in this company, but I never did so, and, after a time, the company, for some [637—531] reason unknown to me, went out of business.

Some time afterward Thorn came to me and said that McMurtry was about to make an attempt to locate some new oil properties and pay back the stockholders who had invested their money in the Empire Oil & Development Co. He stated that McMurtry needed some powers of attorney in order

to make the oil locations and asked me to sign some of these powers of attorney for McMurtry, telling me that of McMurtry discovered oil I would get something out of it. He promised me no definite amount of money and no specific interest in the lands he located. I do not now remember how many of these powers of attorney I signed, but they were all part of the same transaction. No money was ever paid out or demanded of me in connection with the location, the powers of attorney or any part of the transaction. The powers of attorney were signed more as an accommodation to Thorn and McMurtry than for any other reason. I do not even know where the lands which were located are situated.

After signing the powers of attorney, I paid but little further attention to the matter until two or three years ago when Thorn came to my office and said he had good news for me. He explained that each of the persons who had given a power of attorney for the location of lands similar to mine was to receive one thousand shares of stock in the Pacific Oil Lands Co. and \$250. in cash. He said, however, that it would seriously interfere with the company's finances if they paid out all of this money in cash and he proposed that I accept in its stead 750 shares of stock in the Columbus Midway Company. He promised that in a year this stock would be worth considerably [638—532] more than the \$250. I assented to this proposal and indorsed the \$250 check to Thorn receiving in return 750

shares of stock in the Columbus Midway Co. and 1,000 shares in the Pacific Oil Lands Co.

Last December or January, Thorn again came to my office and told me that I was entitled to a dividend of \$20 on my stock in the Pacific Oil Lands Co. He explained that the land had been leased to another company which was paying \$20,000 a month for the oil taken out, and this \$20 was my share of the lease money.

About a month ago, Thorn came again to my office and informed me that there was an opportunity to get rid of my stock in both companies. The Pacific Oil Lands Co. would pay me \$250 for my stock and he would pay a like amount for the stock in the Columbus Midway Company. I asked him whether the Pacific Oil Lands stock was not worth more than this, and he stated that if I wanted to hold on to it, I would probably receive in dividends \$20 a month for the next four or five years. This would be derived from the money received under the company's lease. He added, however, that the company was having some trouble with the Government over the title to the lands, and I was taking a chance on holding the stock and that \$250 was a good price for it at the present time. Since I was in need of the money at the time, I agreed to return the stock, signing the certificate in blank, and receiving therefor \$250 in cash. Thorn also paid me for the stock in the Columbus Midway Company which I returned to him at the same time.

Attached hereto is a copy of a letter sent by me

[639—533] *me* to Hamlin E. Fitch, which explains in detail my transactions with the Pacific Oil Lands Co.

I have read the above affidavit before signing same.

(Signed) GEORGE A. MEINECKE.

Subscribed and sworn to before me this twenty-fifth day of April, 1914.

(Signed) J. McG. WILLIAMSON,
Special Agent, G. L. O."

(Letter read by Mr. Ach as follows):

"174 Archer Avenue,
Mt. Vernon, N. Y.

March 26th, 1914.

Mr. Hamlin E. Hatch,
General Delivery,
San Francisco, Cal.

My dear Mr. Hatch:

Some time prior to 1911 I was requested by Mr. C. W. Thorn of 7 Prospect Avenue, Middletown, New York, to give power of attorney for the location of certain oil property in California, at which time he informed me that Mr. L. B. McMurtry was the party that was doing the actual locating. From time to time after I signed power of attorney, I was requested to sign various papers and additional power of attorney, various reasons being given at the time the requests were made.

Some time in 1911 Mr. C. W. Thorn called upon me and presented a check for \$250.00, same being

a payment in connection with the sale of some property which had been located in my name. He stated that the company didn't have sufficient funds to make payment on these checks and merely presented same for my endorsement, and that he would give me instead, 750 shares of the Columbus Midway [640—534] Oil Company, which he said at the end of a year or so, Mr. McMurtry would be willing to take over at \$250.00, should I desire to sell it, and that it undoubtedly would be worth more than that sum in a year or two from the date he gave it to me. I endorsed the check and gave it back to Mr. Thorne without receiving any money therefor, and instead, accepted 750 shares of Columbus Midway Oil Company, said certificate being No. 420, and being made out to Mr. C. W. Thorne. I did not have this stock *record*, but kept it in the name of Mr. Thorne.

At or about the same time of the above transaction, Mr. Thorne gave me as my holdings in the property which had been located in my name, 1,000 shares of the Pacific Oil Lands Company. From that time up to January, 1914, I heard nothing whatever regarding the property or what was being done, except in so far as I was requested to sign my name to different papers. In January, 1914, I received \$20.00 as the first dividend on my stock of the Columbus Midway Oil Company, for the month of January, and understood I was to receive \$20 per month for a number of months, but did not know just how this was arranged. The \$20 above

referred to was the only dividend I received.

On March 13th, 1914, Mr. C. W. Thorne came to my office and told me that inasmuch as I had told him upon one of his previous visits, that I was anxious to turn my stock into cash as soon as possible, that he would buy my stock and offered to make good Mr. McMurtry's promise to give me \$250 for my 750 shares of Columbus Midway Oil Company, and also offered me \$250 for my 1,000 [641—535] shares of the Pacific Oil Lands Company.

As his offer was made at a time when I needed as much cash as I could collect, I accepted his \$500. which was tendered in cash. I endorsed the Pacific Oil Lands Company stock which was in my name in blank, and did not even insert the date as Mr. Thorne requested me not to. The 750 shares of Columbus Midway Oil Company, being in the name of Mr. Thorne, he requested me to copy the printed matter from the back of the certificate and to sign my name and to leave the certificate blank and also to leave the date blank. This I did.

Enclosed you will find a copy of the printed matter to which I merely added my name. I could not quite understand why I was requested merely to sign my name, but having confidence in Mr. Thorne, did as he requested. Since having the above transaction, I have come to believe that I parted with stock that is worth considerably more than the amount I received, and therefore, having learned in an indirect way that you were in San Francisco, and not knowing your address, I write these facts to you in the

(Testimony of George A. Meinecke.)

hopes that you will be able to make some sort of an investigation to see if the facts were as they have been stated to me, and to learn whether I have been done out of money that I really was entitled to. If you find I have not been treated honestly in this matter, and there is anything that can be done to secure the difference between what I should have received and what I did receive, I would thank you very much for the information.

Regretting that I did not know that you were going to California so that I might have seen you before you left, and hoping that I shall have good news from you, [642—536]

I remain,

Yours very truly.

GAM/HHP."

Yes, I endorsed this check dated September 11, 1911, and received the stock in the Pacific Oil Lands Company and the Columbus Midway Oil Company at the same time—in September, 1911. I received the 750 shares of the Columbus Midway stock instead of the cash for the check. No, at the time I signed the ratification August 16, 1910, I did not give any money or promise any. No, prior to coming to San Francisco in 1916 I was not advised that McMurtry or anybody else had caused all the stock in the Pacific Oil Lands Company with the exception of three qualifying shares to be issued to himself. I didn't know how many shares were issued. Did not know at the time I received that check that any stock had been issued to McMurtry, Searls, Harrison or Hoeppner.

(Testimony of George A. Meinecke.)

Yes, I mailed that letter to Hatch. Have looked all through my papers but do not find the answer.

Recross-examination.

Have no recollection at the time I received the 1000 shares of stock in the Pacific Oil Lands Company of having signed a receipt other than the receipt on the back of the check for \$250, dated September 11, 1911. Don't recall giving any other receipt or release. As I recall, I just gave him my thousand shares and he gave me the money. [643—537]

Deposition of John B. Thickens, for Plaintiff.

JOHN B. THICKENS, called by plaintiff April 27, 1917, testified by deposition as follows:

I am engaged in the woolen business. Reside at Gramercy Place, New Rochelle, New York.. Never lived in any of the so-called public land states west of the Mississippi River, nor have I ever engaged in mining or the production of oil. In December, 1907, lived in New York City and was engaged in the woolen business at 79 Fifth Avenue, as a member of the firm of Nixon & Thickens. Met L. B. McMurtry at his office, 299 Broadway, in 1905. I became assistant treasurer of the Empire Oil Company at that time and was associated with McMurtry during 1905, 1906, and 1907. F. H. Searls was treasurer. Met McMurtry through my wife, who was employed in the office of the Empire Company. I was assistant treasurer. Did not know much about the affairs of the company during 1907. My stock was given to me. The matter of this power of attorney to which

(Deposition of John B. Thickens.)

I secured a number of signers was first suggested to me I think in December, 1907, in McMurtry's office. Don't recall how long before I secured signers. It was his venture. The question of securing names to these powers of attorney was talked over a number of times. It was explained to me, simply what McMurtry could do out there and what he knew about oil lands. Talked in a general way, and that was what I explained to all of the people I afterwards secured. No, I did not request any persons to sign that power of attorney. Yes, I talked to some about signing. Talked to Herbert M. Walker, H. E. Bashore, R. D. Welch, F. H. Romaine, Jr., W. A. Keenan, C. Rupert Walker, Eugene Metz, Frank E. Pratt, William Mahr, J. C. Thickens, T. R. Bailey, Hamlin E. Hatch, Mark W. Hatch, Walter Wilson, J. E. Farrell, William F. or Wellington F. Christman. Yes, I might have been present when those parties signed. [644—538] Bailey is an uncle of mine, and resided at Utica, New York. J. C. Thickens is my father. Yes, he and T. R. Bailey are now deceased. R. B. Welch is my brother-in-law. No, I did not see William F. or Wellington F. Christman sign the power of attorney. I signed the name William F. Christman to that power of attorney. No, Wellington F. Christman was not then in the city. No, he did not appear before the Commissioner of Deeds Handel. Yes, J. C. Thickens was in the city at the time it was signed and to the best of my recollection T. R. Bailey was and I saw them sign the power of attorney. I presented this power to the various per-

(Deposition of John B. Thickens.)

sons whose names I mentioned. Explained to them the whole proposition as I understood it; that there was a chance for them to locate some lands in California; that McMurtry was an expert oil man and understood all about oil lands and there was a chance for them to locate some lands and possibly make some money out of it. After securing these signatures, the next I heard of this was sometime in 1910. Don't recall having any communication with McMurtry with regard to these transactions during 1908 or 1909, and sought no information with regard to it during that time. I really don't know why I did not sign the power except that they were all filled up and I did not even sign my name or my wife's name. In 1910, I believe Searls was on here at that time, I remember about these ratifications in 1910. Did not personally talk to the locators about executing this. I know of money having been paid out to the locators during 1910. Searls handled the transactions. Q. Did you receive any money at that time on account of these matters? A. I may have received some.

Yes, I may have procured the ratification by Wellington F. Christman, or William F. Christman—I don't recall. Yes, I [645—539] recall visiting Christman at Clinton, Wisconsin. Went there to get him to ratify the original power of attorney. May have had some correspondence with him before going. Yes, I knew of stock being given to these locators. That was in about 1910 or 1911. After the signing of these powers of attorney, believe I saw

(Deposition of John B. Thickens.)

McMurtry personally here in 1911. Had no particular talk with McMurtry about these stock transactions. Repeatedly had talk with the signers regarding the stock transactions. They all seemed to be very much satisfied—very much pleased about receiving stock. A great many of these men worked in my office and they seemed very much pleased over the receipt of \$250 from Searls. I talked with some of these men about the transaction in which they delivered up their certificates of stock. Talked with Welch and Bailey and possibly some others. Cannot recall what any of them said after these stock transactions in 1914. Don't recall anything else occurring until the fall of 1916, then a number of the locators went to California. Mr. Helm was here and talked to me before they went to California, in about September or October. Don't know whom Helm represented. Said he was representing some oil companies in California. Don't think he said in what capacity. He was here and I saw him every day for eighteen or twenty days. Don't think I was present when he talked with any of the signers. I took him to the various places where these locators were and introduced him. Was present at some of these conversations. Don't know what Helm said to these people. No, I did not participate in the conversations. [646—540]

Cross-examination.

I hold a thousand shares of the Empire Oil and Development Company in my own name. Yes, prior to 1906, I had a good deal of talk with McMurtry

(Deposition of John B. Thickers.)

and Searls, who were with the Empire Company, about oil lands, and had heard of great fortunes that had been made in California by different people in the oil fields and about the vast acreage that were obtained from the Government by mere occupancy and drilling upon the lands, and knew from McMurtry's conversations that the mining laws required an expenditure of only \$500 in assessment work and \$100 a year after discovery of mineral—something of that kind. No, I was not on a salary as assistant treasurer of the Empire Company. Yes, I sold some stock on commission, and it was necessary to talk about the proposition, and had been advised by McMurtry and others of the large producing lands in California obtained from the Government on their locations, and in selling stock of the Empire Company and in attempting to sell it, I knew he had a general idea of what the properties of the Empire Company consisted, or was or might be, to a certain extent I knew something. No, I did not know that some of these lands were located and not patented. Yes, I knew before talking to anyone about signing these powers of attorney that the purchase price of this land from the Government was \$2.50 per acre. Yes, I know that the Empire Company discontinued doing business before these powers of attorney were obtained in 1907, because of the fact that there was a panic and it was impossible to sell stock or get money to do development work upon the property. Yes, the property that they had been on. Yes, I knew the financial condition of some of the people to whom I

(Deposition of John B. Thickers.)

spoke about signing these powers of attorney. Knew Herbert Walker, W. A. [647—541] Keenan, William Mahr, and Francis E. Pratt were in condition to have put up \$100 or \$200 a share a year for assessment work. I knew nothing as to their inability to do so. In these talks with McMurtry prior to signing these powers of attorney, McMurtry did not tell me that he wanted me to go out and get a lot of people to sign these powers so that he could control or so that he could get the lands for himself or for me—positively not. No, I had no interest in the lands located by McMurtry for these people whom I got to sign or in the lands located by those whom I did not get to sign. No, McMurtry did not say he wanted to get “dummy” locators. Yes, he said he was going out to California, and that he was going to look over the unoccupied Government lands, or lands where persons had permitted their locations to lapse, and that he wanted to be prepared, if he could, by and with the authority to act in the matter of the location of such land for actual *bona fide* citizens of the United States. No, he did not tell me not to sign the power of attorney or not to have my wife sign. Yes, there was a decidedly friendly feeling between McMurtry and myself. No, there was no understanding that I was to have any interest in the lands located in the names of any of these people: No, neither myself or my wife were promised any interest in the lands that might be located or any interest in the profits. When I spoke of having received some money at the time of the securing of this rati-

(Deposition of John B. Thickens.)

fication I referred to the money I received for expenses in order to see Mr. Christman. Searls paid my expenses to Wisconsin where Christman was then living. No, I had no correspondence with Christman before signing his name to the power of attorney. Yes, I knew thousands of people in New York at that time. No one that I [648—542] asked refused to sign this power.

Q. What reason did you have for getting your father and your brother-in-law and your uncle, Mr. Bailey, to sign the power of attorney, and yourself put the name of your uncle, Mr. Christman, upon the power of attorney? A. I felt it was a very good change for them to make some money.

I signed Christman's name because he was so far away I could not reach him quick enough and thought he could make some money. Yes, he signed the ratification after I had explained it all to him. No, none of these people who signed at my suggestion, particular C. Rupert Walker, signed as a favor to me, absolutely not. No, I never asked Walker or any other person to sign a power of attorney as a favor to Mr. McMurtry or the Empire Company. Yes, I explained to Christman before he signed the ratification that the power of attorney to which I put his name had been recorded and that oil lands had been located under it and some contracts with Herrin and other people had been made concerning it. No, I did not then know the details of this contract. No, I was not paid anything by McMurtry or promised anything for getting signatures to these powers of

(Deposition of John B. Thickens.)

attorney nor was I ever paid anything for speaking to those people about the ratification or doing anything else for McMurtry or any of the people in these matters, except expenses on my trip to Wisconsin. No, I was not given by McMurtry or anybody else any stock in the Pacific Oil Lands Company in 1911 when this stock was being given out to the locators. Yes, it is a fact that I consented to include myself and wife in this opportunity, and have locations made in our name. Yes, it is true McMurtry limited the number of powers of attorney, that he wanted but thirty-two, and then told me [649—543] that they had all been filled up. Yes, it is true that after I had turned in my powers of attorney McMurtry told me that there was no use of his taking my power of attorney and that of my wife for the reason that he felt under obligations to make locations.. of he did, in the names of these thirty-two people who had already signed the powers. Yes, at the time McMurtry was here distributing the stock he talked to me about it. Yes, I undoubtedly saw McMurtry when he was here both in 1910 and 1911. No, I never attempted at any time to influence any of these persons as to how they should testify nor did I discuss with them what that testimony would be if they went out to California.

Redirect Examination.

At the time Walter Wilson signed this power of attorney he was in my employ receiving a salary of between \$600 and \$750 a year. C. Rupert Walker was receiving approximately the same.

(Deposition of John B. Thickers.)

Q. Were any of the persons whose financial condition Mr. Ach inquired about, or Walter Wilson or C. Rupert Walker, were they at that time in such a financial condition that they could have expended the sum of one hundred dollars for each of nineteen or twenty-four claims in the North Midway field, and one hundred dollars for each of approximately forty claims in San Benito County?

A. I don't know.

No, I did not ask Mr. Nixon to sign this power of attorney. No, McMurtry did not ask or suggest that I or my wife sign. My father had a thousand shares of Pacific Oil Lands Company—as a locator. No, no stock was issued to myself or wife, nor did I own any then or now. No, no one [650—544] held any stock in this company in trust for me, nor does anyone now so hold any. No, I have absolutely no interest and never have had in the Pacific Oil Lands Company.

Recross-examination.

Yes, my father is deceased. Oh, yes, he left me a thousand shares of stock.

Redirect Examination.

No, McMurtry did not ask me to get the signatures of any specific persons to those powers of attorney, nor did he suggest that any specific person should not sign it. [651—545]

Deposition of George F. Handel, for Defendants.

GEORGE F. HANDEL, called April 30, 1917, by defendants, testified by deposition as follows:

Am a practicing lawyer and now reside at Montclair, New Jersey. In December, 1907, resided in New York City and was a commissioner of deeds. Such officer is one appointed by the Board of Alderman authorizing the taking of acknowledgments, jurats and oaths. No, I kept no record of the persons who appeared before me. Was not required to do so under the law as I understood it. The custom was not to keep records so far as I knew. No, I do not remember of taking acknowledgment to powers of attorney to the persons who were located at 299 Broadway, New York. Yes, I knew J. B. Thickens. Met him years ago. He was a partner of Fred Nixon. Never met L. B. McMurtry. I took thousands of acknowledgments but have no recollection of any particular case. If my signature is attached to the acknowledgments, the person acknowledging appeared at the same time or someone who was introduced as such person did.

Q. It has been testified by Mr. Christman, that he was not in the State of New York in December, 1907, and it has been testified that John B. Thickens signed the name of William F. Christman to the power of attorney in this case, and that Mr. Christman did not appear before you and acknowledge the power of attorney. Can you explain the fact that the power of attorney appears to have been

(Deposition of George F. Handel.)

acknowledged by Mr. Christman before you? A. No, I cannot explain it. If the power of attorney is acknowledged by me and bears my signature, the people that executed it either acknowledged it before me or someone in their behalf did, and were introduced to me as the one. That was my custom at least. I have no independent recollection as to the [652—546] transaction at all. Q. Then at the time these various people acknowledged this power of attorney, you did not know them and you did not know whether they felt that you knew them at the time? A. A man would come in. I can explain the way it happened. I was the commissioner, and a man would come in and say, This is so and so, and so and so, and this is so and so. He acknowledges this. Do you? I acknowledged it, yes, and then I would take his acknowledgment.

Yes, I simply took the word of the man that introduced him to me as to the fact that he was the man. [653—547]

Testimony of Sue Greenleaf, for Plaintiff.

SUE GREENLEAF, called February 28, 1919, by plaintiff, testified in open court as follows:

Reside on Bush Street, San Francisco. My occupation has been practically all my life a teacher and free-lance journalist. First met L. B. McMurtry in 1902 or 1903. Am the person whose name appears in these deeds (Plaintiff's Exhibits 18, 20, 22 and 24) and was present when these location notices (Plaintiff's Exhibits 17, 19, 21 and

(Testimony of Sue Greenleaf.)

23) were posted; prepared these notices myself. The circumstances under which I put these names on these notices were as follows: I came out to California to see about some oil stock I owned in the Oriental Oil Co., and while I was here Mr. McMurtry told me, in July, 1908, about the lands, and I was going to locate the lands in my own name and in the names of relations; Mr. McMurtry advised me not to have anything to do with my relations, that he had the power of attorney to act for certain New York people, and that I could use those names, and he would give me a quitclaim deed, as he was the attorney in fact. He told me that if he gave me the quitclaim deeds I would have to develop these lands at my own expense, and in the event that there were any results from the development, those people were to have an interest. Nothing was said as to what interest they were to have, except that he said it would be a nominal sum, probably depending upon what I would care to give or they might ask, and that one locator had told him he would take \$250 for his interest. Think this man's name was Seels or Searls—something like that. He said that probably the others would not want anything. There was no arrangement made by which I was to become personally acquainted with those locators whose names I used upon those locations. I recall asking McMurtry in the event we secured oil how I was to let these men know, as I didn't have their addresses, and he said through him. I never met

(Testimony of Sue Greenleaf.)

or corresponded with any of these people, and after I received these deeds (Plaintiff's Exhibits 18, 20, 22 and 24) I never had any further transactions with any of the locators either personally or through McMurtry. [654—548]

Cross-examination.

I reside at No. 776 Bush street, at the Windemere Apartments, San Francisco. Came down here to bring the remains of my mother whom I had interred at Santa Ana, and was just leaving, when I was summoned here.

In 1906 I spent the greater part of the time in Mexico and in Chicago, and I was also in New York, I believe. In July, 1908, I came to Los Angeles, California, with my mother. Prior to that time had been in Arizona where I had been conducting some mining interests that I owned in Mexico. Remained in Los Angeles during 1908, after coming here, and went up to Bakersfield and looked up these lands. Think I first went there in November, 1908. Previous to going there had seen Mr. McMurtry in California once. Happened to meet him in front of the Alexandria Hotel where I was stopping. Talked with him a few moments. Was not engaged in mining [655—549] business when I first met McMurtry in Chicago. Think I first met McMurtry in the Fall of 1906. Ever since I acquired the interest in the Oriental Oil Company stock I frequently had letters from McMurtry telling me as to the progress of development and the notices sent out by the secretary.

(Testimony of Sue Greenleaf.)

Never had any personal correspondence with McMurtry. The first time I went to Bakersfield think I spent only one night and then went out to the Stratton Water Company and stayed two or three days. McMurtry came out there about the day before I left. He took me over to see the old Oriental Oil well. I then returned to Los Angeles and was back and forth between Los Angeles and Santa Ana where I had friends. Was not in business in Los Angeles. In Chicago was a free-lance journalist and teacher. Early in March, 1909, I went to Bakersfield. I was fairly familiar with the placer mining law and had determined to locate some lands of my own.

Q. Do you know where the placer mining law is found? A. In the Revised Statutes. On which you locate placer mining lands, you mean. Q. Yes. A. I think it is in Chapter VIII, Title 32, of the Revised Statutes. Q. Where did you first see or read anything concerning placer mining claims in any law book or statute? A. Well, I think it was about in 1885 or 1886 when I was a student, and I was studying law, and I was compiling evidence on many different things pertaining to various forms of litigation, and I was particularly interested in mining because—well, I don't know why; I just happened to fancy that branch.

No, was not interested in any locations in California before I came out; not in locations directly, but indirectly through this Oriental Oil Company. Yes, I was a stockholder in [656—550] the

(Testimony of Sue Greenleaf.)

Oriental Oil Company—had a few shares. I believe about a thousand. I still have them I think. Yes, I had the Revised Statutes of the United States with me in Bakersfield. Yes, while I was at the Stratton Water Company. At that time I had quite a long talk with McMurtry about the locations he had made in that district. That was in November, 1908, I believe. Am not positive about the date, but it was when Mr. McMurtry returned from wherever he had been to the Stratton Water works. The following morning he asked me if I would like to see the old Oriental property, and I said yes. Yes, I think this was before Christmas, 1908, and after Thanksgiving day, 1908.

Q. Now, what conversation did you have then with Mr. McMurtry about oil lands, locations, or anything of that kind? A. When we were standing at this old Oriental oil well Mr. McMurtry pointed out with a sweep of his hand like this (illustrating), "All of these lands," he said, "in this direction are prospective oil lands and we have located a number of sections, and," he said, "we—the major and myself—intend to locate a hundred sections"; and I said, "Well, I wish I knew some good prospective lands, the actual sections, township and range," and he says, "Well, there is no use; I am going to locate them all. I have located a good many, but I am going to locate all of these." And I remarked to him, "Well, why did you, then, tell me—or tell my mother, rather—that if I would come up here you would point out some prospective

(Testimony of Sue Greenleaf.)

good oil lands to me?" He hesitated a moment and then he said, "Well, I will change my mind; I won't locate them all, and I will tell you where you can get some pretty good prospective lands. I did tell your mother that." He says, "But take my advice and don't locate them in the names of your family." [657—551] Q. That was, then,— A. Right then and there, yes. Q. Right then and there? A. Yes. Q. And he volunteered the advice not to locate them in the names of your family? A. Absolutely. I had never dreamed— Q. Why did he tell you not to locate them in the names of your family? What reason did he give you? A. The reason he gave was—I said to him, "Why?" I said, "My mother"—and I mentioned other members of my family, including myself as one of the right locators. He says, "Because they will always be nagging you,— "What have you done? What have you done?" and he says, "They will just keep that up until you go mad." Q. You discussed with Mr. McMurtry at that time how much money it cost to locate the lands? A. Well, I knew approximately. I don't think I discussed it with him. Q. Were you a lady of means at that time? A. I had some money; yes, sir. Q. And did you know what was necessary in order to prospect oil lands? A. I knew what was then considered necessary; but we have learned something since. Q. What did you then think you knew about that?

Mr. HALL.—This was not brought out on direct examination, your Honor.

{Testimony of Sue Greenleaf.)

Mr. ACH.—It is part of that conversation.

The COURT.—Yes, it is part of the conversation.

A. What did I think was necessary?

Q. (By Mr. ACH.) Yes. A. Well, first I had to put my locations on; then, in order to follow the law, I had to file them for record, which I did, and paid for them, and I received my quitclaim deed. I received from Mr. McMurtry— Q. No, you are getting away from the question. What did you think was necessary to develop— A. Well, that was necessary. To begin the *modus operandi* or procedure I had to have something [658—552] before I could do anything, didn't I? Then I got the deed. Then I had, before coming to California, a tentative proposition with the gentleman who had a great deal of money that in the event that I secured anything good either in oil lands or placer or other lands he would see that they were properly financed. So this man at this time was in London, and his name was John Weir, and I had known him for a number of years. Q. Well, did you know that you had to do any work on the land? A. Yes, I knew I had to do a hundred dollars worth of assessment work each year to comply with the then placer mining law. Q. Until when? A. Until I struck oil. Q. That was your understanding then, was it? A. That was my understanding then, yes. Q. You availed yourself of the suggestion made to you by Mr. McMurtry at that time, did you not? A. I did, yes.

Yes, in March, 1909, I was in Bakersfield stop-

(Testimony of Sue Greenleaf.)

ping at the Southern Hotel. McMurtry was there on the 8th, I know, because he made the deed, I think, on that date. I believe that was the date of the deed. Yes, I was out in the Midway mining district where the Stratton Water well was in March, 1909. Yes, I know a man by the name of Abbott. Met him in Los Angeles. He was going to take hold of the land up there. He said he was going to develop part of the lands with me. Yes, he went out into the field with me and was there when these locations were made. I think I introduced him to McMurtry. Am almost positive that I did. No, I did not tell McMurtry that Abbott was going to be interested with me if I got any oil land. I told McMurtry that Abbott came up to look over the situation and that probably he would be interested in some of the lands for himself and he might become interested in some of those. I know where sections 32 [659—553] and 28, township 31, range 28 are on the map. No, I don't recall where they are if I ever knew them. Yes, I certainly know where section 4, T. 31-23 is and where sections 6 and 10 are.

Q. Now, who picked out any part of section 4 or section 6 or section 10 to be located that day by you in the name of these locators? Who picked out those quarter-sections? A. The evening before I went out to locate them Mr. Kay and this mining engineer came over to the Santa Fe Company's office—headquarters—where I remained that night and laid the maps out, and I myself picked out the

(Testimony of Sue Greenleaf.)

sections that seemed to me—of course I am a novice—but that seemed to me to be along the line of the so-called anticline, and when I picked out the corner, those up there in No. 6, 31-23, they seemed to think I was foolish. Q. Who were “they,” Mr. McMurtry? A. No, I don’t think he came over there from the Stratton Water Company that evening. I am not sure whether he did or not. Q. Then it was you who picked out those sections to be located that were named in these locations Mr. Hall drew your attention to? A. Well, any specific one of them. But in a general way the whole district pointed out to me as being— Q. Yes, but as to picking out these specific lands which were described in these location notices which you say you drew, you are the person who picked out the specific quarters? A. Well, yes, following the advice, however, that they were all seemingly good prospective lands. Q. And who gave you that advice? A. Well, Mr. Kay. Q. Who was Mr. Kay? A. Well, Mr. Kay seemed to be a friend of Mr. McMurtry’s. I had never met him. Q. Was he a friend of yours? A. No, sir. I had never met him until that day when I got off the train. Q. Well, now, I don’t [660—554] mean anything offensive by this question, but did you at that time claim to possess any occult powers of ascertaining where oil was? A. I never claimed to possess any occult powers whatever. Q. There are people, you know, who do claim that. A. Yes, some ignorant people do, I suppose. Q. Did Mr. Kay or Mr.

(Testimony of Sue Greenleaf.)

McMurtry or any of those people tell you why they had not located these lands themselves before that time? A. I don't think they did. Q. Didn't tell you why they were letting that good thing go by and using your good offices to help them locate it, did they? A. To help them locate it? Q. Yes, to help them locate it. A. Well, it was my understanding that they had all the lands that they seemed to think they could finance. Q. Did they tell you that? A. That was my understanding. Q. Did they tell you that? A. I don't remember. Q. Where did you get the understanding? A. Well, from different conversations, different remarks that had been made. Q. By whom? A. By the different men. Q. What men? A. Mr. McMurtry, Mr. Kay, and— Q. Now, Miss Greenleaf, you said, if I understood your testimony correctly, or your evidence, that you drew or prepared these location notices. A. I wrote them out, yes, sir. Q. In pen and ink? A. I think I wrote them with an indelible pencil. Q. And where, or at what place, did you write them? A. On the ground. Q. On the ground? A. Yes, sir. On the quarter-section where each quarter-section was located I wrote—

Mr. ACH.—Excuse me—

Mr. HALL.—Let her answer.

A. (Continuing.) On the quarter-section on which I placed the location I sat down there on the ground and I wrote, I believe, with an indelible pencil, the names of these locators right there, [661—555] and put the date down, the hour and

(Testimony of Sue Greenleaf.)

all. Q. Did you have printed locations? A. Yes, sir; they were printed. Q. Where did you get these printed locations? A. I bought them in Bakersfield, I think, at some stationers. I am not positive now.

Q. You don't remember? A. No. Q. How long before you went out there, then? A. Well, I had had those, I think, ever since the first time I went up there. I am not positive, however, about that.

I know I did have location notices— Q. Now, who was with you when you did that? A. When I placed them on? Q. Yes, when you wrote them? A. Mr. E. W. Kay, this mining engineer, and this Mr. Abbott, and myself. There were four of us right there. Q. That is, Kay, Abbott, yourself, and who else? A. Well, this mining engineer, whose name I cannot recall. He was an elderly gentleman, but I had never met him— Q. Who gave you the description of the property? A. Well, the geographical description—I believe it was Mr. Kay—

or this surveyor. Q. Who? A. This gentleman was a surveyor, I think, as well as a mining engineer, and I believe they found the corners. Q. And these notices that you had then were never in the hands of Mr. McMurtry, were they? A. Well, except indirectly. Q. How do you mean, indirectly? A. Well, he had them in his hand and looked at them, if that is what you mean. Q. Before you made them out? A. Oh, no. Q. After you made them out? A. After I made them out, I think.

Q. Well, after you made them out you posted them on the land, did you? A. Yes, we posted copies on

(Testimony of Sue Greenleaf.)

the land, and the originals— Q. Did you make more than one copy of the location notices? A. Yes, sir. Q. How many did you make? A. I think I made three. Q. And what did you do with them when you got back to the camp? A. I then took these notices to Bakersfield and [662—556] filed them for record, keeping my own copy which I have in San Francisco.

Q. How many different locations were made, of which you have a copy? A. Well, I located, I think, all four on section 6, and I believe it was all on section 4, and I think half of section 10.

Yes, that would be at least 10 locations of which I have the original notices at home after having had them recorded. I named each of these claims, but don't believe I can recall the names now. Yes, I recall why I named one of these "Georgia" Placer Mining Claim. That was because my grandmother was born—well, she was not born in Georgia, but she had a great many relatives who lived there, and I was very fond of them, and I thought I would name them all, at one time, after the states in which different relatives were born. No, I didn't name these locations in that way. I said I had that in mind, but I didn't name them after different states, not all of them. Yes, Mr. McMurtry told me that if he were in my place he would not locate these lands in the name of relatives because they would be pestering me all the time and wanting to know what was doing and what I was getting out of it and all that sort of thing. He told me that while

(Testimony of Sue Greenleaf.)

we were standing on the Oriental oil well property.

Q. At which time he said to you: "Well, I won't locate all this land; I have got more than I can finance now, and you can go and locate this, that and the other, and I have got some powers of attorney, and am representing some people, and I will let you have their names and then you can—depending on what you get out of it—fix the matter up with me." Something like that, was it not? A. I don't think he used those words—"fix it up [663—557] with me." He said his locators would have an interest in the lands. Q. And at that time, in November, 1908, he actually pointed out to you certain lands that he would let you locate in that way, did he not? A. He pointed out this way (illustrating) with a sweep of the hand, the Buena Vista Hills, and he says, "Over there lie some lands that I had intended to locate," and I believe he said he had already located some in that particular vicinity, and he had intended to locate a large amount of acreage in addition, and he says, "Now, I have reconsidered." So he says, "There is some over there that are prospectively good, and if you want to locate on them all right." Q. He told you not to use your relatives' names, didn't he? A. He advised me not to use my relatives' names. Q. And what did he say to you at that time and place upon your first visit to the field about what he had done in the way of locating and in whose names he had located? A. He told me that he had located a good many sections in the names of certain people, I be-

(Testimony of Sue Greenleaf.)

lieve from New York, through power of attorney, which he had gotten to use their names in the location of these lands. Q. And told you that he would let you use the names of those people? A. Yes. Q. And told you at that time that if you got anything out of it, why, you could fix it up with him? A. I don't think he used those words. Q. Well, I don't mean to charge you with using the word "fixed"—but settling it with him, or arranging it with him, or giving him a nominal sum, as you said, for the use of those names. A. At that time the only offer I remember Mr. McMurtry having made in reference to what the locators would get was that they would have an interest. Q. That they would have an interest? A. That they would have an interest. Q. But the interest was not defined? A. The interest was not defined at that time. Q. And did you [664—558] acquiesce in the proposition? A. Yes. Q. You told him all right, you would use them; is that right? A. I told him all right, I would use them, yes. Q. Well, then, why didn't you go out and do it, then, at once? A. I told you it was so very rainy it was almost impossible to get into the fields. Q. But there were men there that could have gone out and— A. I want to do it myself. I have always been in the habit of attending or attempting to attend my own business, and I wanted to put them on with my own hands, to see that they were there. Q. You received the promise from Mr. McMurtry that he would go out and locate those lands himself, but would keep

(Testimony of Sue Greenleaf.)

apart certain lands that you could go out and locate on in the name of his locators. Was that agreed to then? A. He did not specifically state any sections, but he said he would not locate all of these lands. And I was glad there was a little of the public domain being left. Q. And he was leaving it for you? A. Well, for anyone who might chance to care to locate it. Q. And he told you at that time that some one man you could fix for \$250. A. Not at that time. Q. When did he tell you that?

A. Some time subsequent to that. I don't remember the date now. Q. How long subsequent to that? A. A few months. Q. After the location was made? A. After the location was made, yes. Q. After the location was made he said you would get one man's title for \$250, didn't he? A. He said this one man had told him he would take \$250 for his interest.

Q. For his interest? A. Yes, for his interest. Q. Now, up to the time that you returned to Los Angeles did you go to the records of Kern County and run down the condition or the situation of any of the lands in the Buena Vista Hills? A. I did.

Q. Who went with you? A. I had a Mr. Clark, I think was the gentleman's name, who was [665—559] connected with some mortgage company there— Q. Abstract company? A. Abstract company. Q. And did you do that before or after you went out into the field? A. I did that before. Q. You had never been out there in your life, and you went to the abstract company and got them to do what for you? A. I did it myself. Although

(Testimony of Sue Greenleaf.)

Mr. Clark had given me—I had probably 50 or 60 sections along in the Buena Vista Hills; I had the numbers of probably 50 or 60 sections, and I had Mr. Clark look over those to see if there were any recent locations or any locations in past years that had kept up their development work, and he picked out certain sections that he said there was nothing on the books to show that they had ever been located—or that the law had ever been complied with; no work had been done, or at least not recorded, and no locations had been placed on there for—some of them extended back as far as ten or fifteen or twenty years—and nothing had been done.

Q. Then up to the time you returned to Los Angeles you had not seen any power of attorney that Mr. McMurtry had from any of these New York people?

A. Yes, I had seen it. He had shown me his power of attorney. Q. And you read it? A. I read it,

yes, sir. Q. And that was while you were out there at the Stratton Water Company? A. I believe Mr.

McMurtry first showed me the power of attorney at the Alexandria Hotel before I ever went up to the Midway. Q. That was before November, 1908?

A. Yes. That was some time in July or August, 1908. Q. And did he tell you at that time that he

had located any lands under that power of attorney in the Midway district? A. Yes, I think he told me he had, or was about to. I think he had.

Q. And you read that power of attorney then, did you not? A. I read that power of attorney, yes.

Q. And when did you next see it? A. Well, I think

(Testimony of Sue Greenleaf.)

I looked over it—read [666—560] it over very carefully, up at the Stratton Oil Company, along in November or December, 1908. The names I wrote on these location notices were taken from the powers of attorney, which names were given me by McMurtry. I gave McMurtry nothing for these deeds. I told him I thought I would be able to finance the development of the lands, and in that event the persons whose names were used would get something out of it. [667—561]

Testimony of Earl S. Shaw, for Plaintiff.

EARL S. SHAW, called February 24, 1919, by plaintiff, testified in open court as follows:

I live in Bell Ridge Oil District and am superintendent of a lease for the Pittsburg-Belle Ridge Oil Company. Have been in the oil game since 1905, working from the bottom up. Was employed in the Midway field in 1908, on what is now the California Midway Oil Company's lease, which lease was in charge of David Kinsey, who was superintendent all the time I was there, a little over a year from December, 1908. When I went there most of the equipment was on the ground. They had equipment on the ground for other wells and we worked on all of them. The derrick was not up when I went there, but was erected shortly after and we began drilling on well No. 1 early in 1909. The location of this well was not changed after I went there that I know of. The northwest corner was across the road from well

(Testimony of Earl S. Shaw.)

No. 1, and I have a faint recollection of there being a location notice there.

Q. The records of Kern County disclose that on January 1, 1909, a location notice was posted upon the southwest quarter of section 1, in township 31 south, range 24 east, M. D. B. & M., and that the claim was called the "Mischief No. 12" Placer Mining claim, upon which the names "Herbert M. Walker, H. E. Bashore, R. B. Welch, F. H. Romaine, Jr., W. A. Keenan, C. Rupert Walker, Eugene Metz and William Mohn" appear, and the witnesses to the posting were Earl S. Shaw and David Kinsey. Are you the Earl S. Shaw whose name appears upon that location notice?

A. Well, I would like to say that on the 1st of January, 1909, I made a trip with Mr. Kinsey for the purpose of locating lands, and at that time we did use some names. Now, I don't know whether those are the names or not. At that time I knew what section I was on, because we found the stakes, but now I couldn't say whether that is—[668—562] any more than to see my signature on it—I did witness the location of I believe it was thirteen quarter-sections of land on that particular night, but now I couldn't say on what section or on what quarter-section we were.

Q. But you did put your name as a witness on thirteen of these location notices? A. I did put my name on some papers as a witness of location. Q. Did you have any interest or claim any interest in those lands upon which those notices were posted?

(Testimony of Earl S. Shaw.)

A. I thought I had an interest at that time. That was my understanding. Q. And with whom did you have that understanding? A. I had an understanding with Mr. Kinsey. I went out with him and paid half of the expense of going. Q. How much were you to get out of these locations? A. Well, when I went out there was no particular understanding of what my interest would be, but we got out there early and built a bonfire and spent an hour or so trying to keep one side warm while the other was freezing, and Mr. Kinsey and I decided that I would get— We intended to locate—as I say, I believe there were thirteen quarter-sections, and I was to receive either one quarter-section or a one-thirteenth interest in the whole. Didn't know how Mr. Kinsey had obtained the names we were using any more than that I understood the people were his clients and that he had the powers of attorney for them. I didn't know any of these people personally or have any business dealings with them.

Cross-examination.

I was a tool-dresser and workman when I went to work on the California Midway lease. No, I knew nothing about the policy or its management or affairs. It was the evening of December 31, 1908, that Kinsey and I went out to locate lands. Had then worked for Kinsey a couple of years. Oh, yes, I talked with McMurtry. No, not about these locations. Kinsey and I talked about going out to make these locations two or three nights before we went. Don't remember just what the conversation was. I

(Testimony of Earl S. Shaw.)

had been with him before on similar missions. Yes, he told me before he started that he knew some lands that he wanted to locate at midnight, [669—563] December 31. Yes, the lands had been located by other people who had put nothing on them. Don't know why my name wasn't used as a locator. I had acted before as a witness in locating lands with Kinsey. Q. Well, I want to get at why it was that you, who were an *employ* of Kinsey there, working around the place, were called upon by him to go on that midnight ride of Paul Revere and he promised you a one-thirteenth in anything he would locate. Q. Well, I guess I will have to tell you as long as you would like to know. I was in the field a number of years before that, and not only Mr. Kinsey but myself had been out on just such expeditions as that for a firm that we were working for, and had assigned our rights, and we didn't see where we got anything out of it, and we wanted to get something for ourselves—a man will naturally look out for his own interests—and it was customary at that time to locate lands, and we thought we might possible have a little bit ourselves. Q. And you knew that by putting your own name on that location notice and locating in your own name you would get that interest and would not have to give it up unless somebody paid you what your price was, didn't you? A. Yes, sir, I knew that. Q. Now, is it not a fact that you did not know before you started out how many different quarter-sections you were going to locate? A. That

(Testimony of Earl S. Shaw.)

is a fact. Q. But when you got out there and after you located them up and found you had located thirteen. A. Yes, sir. Q. That is right? A. Yes, sir. Q. Then after that Dave Kinsey said to you that he would talk to the parties in interest and make or get them to deed to you one quarter-section or give you a one-thirteenth interest in consideration of your having made that ride that night; is that right? A. Well, he didn't know anything about what I was going to do, but I would understand, and understood from what he told me, that [670—564] he was able to make the arrangement. I didn't know how he was going to do it. Q. That was after the locations were made? A. Yes. Q. Then you figured up how many you made, and Dave thought you were entitled to a one-thirteenth for standing out there and getting cold on one side of your body? A. Yes. Kinsey did not say how much of this land he was entitled to. We were out nearly all night. It was about 10 or 12 miles from the California Midway lease to where we made these locations. Never talked to McMurtry about the matter and never got the one-thirteenth, not that I know of. Yes, I asked for it; asked Kinsey. [671—565]

Testimony of Peter R. Longley, for Plaintiff.

PETER R. LONGLEY, called February 28, 1919, on behalf of plaintiff, testified in open court as follows:

Am in the real estate business and reside at Hollywood, California. Have lived in and about Los

(Testimony of Peter R. Longley.)

Angeles the last fifteen years, engaged in the real estate business. Have known J. M. McLeod about 14 years. In 1909 was secretary of Winton & McLeod Company, real estate, No. 330 South Hill Street, Los Angeles, and was looking after Mr. McLeod's business, doing correspondence as his secretary, and from time to time transmitted by mail papers relating to real estate transactions.

Q. Now, I invite your attention to a location notice of a placer mining claim on the northeast quarter of section 9, township 32 south, range 23 east, M. D. B. & M., which was made on the 1st of January, 1909, and upon which the names of the locators are Frank D. Taylor, Edwin L. Powell, Daniel W. Darling, J. W. Pentz, S. H. Freeman, C. W. Thorn, J. F. Harder, and F. H. Searls. Were you ever interested in any way in that particular quarter-section which I have just described?

A. I was.

Became interested in that quarter-section through Mr. McLeod and Mr. Loughlin. I disposed of my interest; transferred it to the Chanslor-Canfield Midway Oil Company (Plaintiff's Exhibit 48) for \$4,000. I did not give any part of this to the persons in whose names the location was made. Mr. Loughlin, Mr. J. M. McLeod and myself were equally interested in this land.

Cross-examination.

I did not conduct this transaction or negotiation and had nothing to do with making this location or procuring the drafting or execution of any of these papers. [672—566]

Testimony of L. B. McMurtry, for Plaintiff.

L. B. McMURTRY, called March 3, 1919, by plaintiff, testified in open court as follows:

I reside in San Francisco and am one of the defendants. Am interested in mining and have been for probably twenty-five years, in California, Nevada and Arizona. Have also been engaged in oil interests. First became interested in prospecting and developing oil lands about 1898, in the Kreyenhagen district near Coalinga, and from that time have been engaged in locating mining claims upon the public domain and in development of oil on patented and unpatented lands in California. The first company I was interested in was the Oriental Oil Company, in about 1898; the next was the Midway Oil Company, later known as the Midway Oil Company of Oregon, whose main office was at Portland, Oregon, and a branch at San Francisco. This company operated or attempted to develop oil lands in the Midway field, in sections 7, 8, 9, 10 and 4, 32-23; approximately half each of sections 32 and 28, 31-23. Am not positive whether this was the north or the south half of section 32. This company retained possession of these lands until about December 31, 1905. Think these lands were all opened during the year 1906. I claimed no possessory right to them either individually or through any corporation during that year.

Q. The records of San Benito and Kern Counties disclose that there are therein recorded two powers of attorney given—one by Bert S. Denison, Hoka

(Testimony of L. B. McMurtry.)

Roll, Thomas H. Lee, J. L. Bacon, J. H. Dalbert, W. G. Mahoney, H. Baggenbuck, R. E. Pierce and others, which is acknowledged on the 21st of December, 1903, before W. R. Love, a notary public; and another power of attorney given by F. P. Blackman, A. J. Rowley, Harry Sterling [673—567] and others, acknowledged December 30, 1903, before W. R. Love, Cook County, Illinois, by which these several persons whose names appear upon these powers of attorney purported to have appointed and designated L. B. McMurtry of San Francisco as their attorney in fact for certain purposes therein set forth. Are you the L. B. McMurtry whose name is therein mentioned? A. Yes, sir.

Those powers of attorney were delivered to me some time during the latter part of 1903, but I haven't them. Lost them in New York. These powers of attorney were prepared by an attorney for me and the forms were in my possession before they were signed. No, I had no conference with any of the individuals who executed these powers of attorney before their execution. I knew C. A. Dunbar, but had no conference with him in regard to the execution of these powers of attorney.

Q. What did you do with the powers of attorney after your attorney at law prepared them for you?

Mr. ACH.—I make the same objection. And may it be understood that I am objecting to all the questions which are asked this witness of and concerning his dealings with the power of attorney of 1903 upon all lands other than section 32 involved

(Testimony of L. B. McMurtry.)

in this case, or the northwest quarter of section 32, as incompetent, irrelevant and immaterial?

The COURT.—Very well; the objection is overruled.

Mr. ACH.—Exception. Now, may I also have the same objection to all these questions concerning any of the doings of the Chicago locators at all as incompetent, irrelevant and immaterial?

The COURT.—That will be understood, and the same ruling made.

Mr. ACH.—And an exception to each ruling. [674—568]

The COURT.—Yes. For all of the defendants.

A. I had them in my possession probably a year prior to having them signed at this time.

No, at the time I had this power of attorney prepared I did not contemplate any particular individuals who would execute it. Just prior to its execution I think I gave it to L. A. Chadburne, who was an employee of the Oriental Oil Company selling stock in Chicago. No, I had no conversation with Dunbar in regard to the execution of this power. I asked Chadburne if he could get thirty-two locators to sign that power of attorney for the purpose of locating some land in San Benito County. Don't remember just what he said, but probably said that he would see Mr. Dunbar if he could get it done. No, at that time did not contemplate the use of this power in the Midway field. At that time I had no land in the Midway field under location. When this power of attorney was returned to me the names

(Testimony of L. B. McMurtry.)

were appended to it. The names then on it were slightly different from those in the certified copy as there were some errors made in the names when being transcribed by the recorder. Yes, there were thirty-two names on the two powers of attorney when they were returned to me. No, there was no conversation or talk between myself and any one of the thirty-two locators or persons whose names appeared on the powers of attorney other than C. A. Dunbar, in regard to its execution. No, I was not acquainted with any one of these thirty-two persons other than Dunbar, and never met any of them until 1916, or had any discussion with any of them in regard to my relations with them under the power of attorney prior to that time. Don't remember that I ever had any discussion with Dunbar or talk with him in regard to my relations with him [675—569] as attorney in fact under this power of attorney. These powers of attorney were delivered to me during the latter part of December after their execution and the first act done under them was that I located some land in the San Benito field in about 1904, I think. The first time they were used in Kern County in the Midway field was in January, 1907, when locations were made in sections 20, 22, 26, 32 and 34 in 31-23; section 4, and the NE.¼ of section 9 in 32-23. I think that was all. Yes, at the time I made these locations under these Chicago powers of attorney I was interested in the Empire Oil & Development Company, which I think was organized in 1905. I think about one-half of those

(Testimony of L. B. McMurtry.)

locations made under those powers of attorney were transferred to the Empire Oil & Development Company. I was president of the Empire Oil & Development Company during a portion of 1905, 1906 and 1907, and active in the management of its affairs. No, the Empire Company, during 1907 or thereafter, did not claim any interest in the lands located by the so-called Chicago group of locators in the month of January, 1907, nor did any company with which I was associated. No one looked after these locations in the Midway field that I know of. No, I did not visit any of these locations or lands covered by them during 1907 for any purpose. No, I was not there after their location in 1907. Was there during 1908—frequently, from about September, during the remainder of the year 1908. We lived at the camp of the Oregon of Midway on the NW. $\frac{1}{4}$ of section 8, 32-23, during that time. We were there having the lands resurveyed, getting the proper locations,—the prior surveys had been wrong and we spent two or three months getting the land surveyed and getting it into shape, and having the land properly staked and quarter-staked so that we knew our positive locations. When I say “we” I mean Major [676—570] Hoeppepner, F. E. Harrison, E. W. Kay and myself. I don’t remember that there were any particular arrangements with Mr. Harrison or Mr. E. W. Kay. Mr. Hoeppepner, as he had been of a great deal of assistance to me,—in fact without his assistance I never could have located any of the property,—I

(Testimony of L. B. McMurtry.)

had promised him that he should have one-half of whatever I got out of the property. There was nothing specific as to the Chicago locations. It was whatever we got out of the property, irrespective of how the locations or how the property was secured. Don't remember that there was any arrangement made as to the compensation to be paid Kay or Harrison. No, I didn't call upon any of the Chicago locators during 1908, to advance any money for the development and the doing of this work which you have described. Major Hoepfner advanced whatever expense was advanced for that purpose during 1908. Yes, the N.½ of section 32, 31-23, was part of the lands that I, Hoepfner, Harrison and Kay were looking after during 1908.

Q. In 1908 did you make any contract with any person for the development of the north half of section 32, 31-23? I invite your attention to the contract which has been marked Plaintiff's Exhibit No. 36 and is dated October 8, 1908 (exhibiting document to witness). Is that the contract that you refer to? Will you examine it? A. Yes, sir.

No, I don't think that I entered into a contract with Mrs. McLeod about that time affecting section 4, 32-23. After entering into this contract with Mrs. McLeod on October 8, 1908, I and my associates Hoepfner, Kay and Harrison, did no further work on section 32. Yes, during 1908, I was also holding section 28, 32-23. No, not under the Chicago locations. Yes, during [677—571] 1908,

(Testimony of L. B. McMurtry.)

I learned that there were defects in the locations made under the so-called Chicago locators or Chicago powers of attorney. There were defects in both powers of attorney. In the names used on the northeast quarter-section there were five separate and distinct errors, if I remember correctly. Three of the names were absolutely changed. W. J. Nicholls was recorded, according to my recollection, as J. Michals. Price was changed to Pierce, or Pierce was made Price, in the recording of the power of attorney, and W. W. Converse I think was recorded as A. A. Converse—or if it was A. A. it was recorded W. W. I know the initials were changed. Then there were two others, I think, in the northeast quarter. Yes, the correct names were on the location notices. The defect was in the recorded power of attorney I learned of this in the latter part of the year. I was negotiating to sell the northeast quarter of section 9 to the Chanslor-Canfield Midway Oil Company and this error was discovered in October or November, I think. It was after I made this contract with Mrs. McLeod on October 8, 1908. J. M. McLeod acted for Mrs. McLeod in the negotiations concerning this contract of October 8th, and I saw him quite frequently, probably on an average of every week. Yes, I advised him of the discrepancies or defects in these locations or in this power of attorney, shortly after I learned of the defects, which was prior to January 1, 1909. No arrangements were made between me

(Testimony of L. B. McMurtry.)

and McLeod in order to obviate these defects. I don't remember that the matter was discussed. I have a dim recollection of telling McLeod that the matters would be adjusted satisfactorily. I can't say just what I meant by that, because I don't know just what my thought was at that time. I thought perhaps they might be corrected from [678—572] Chicago, or some other way. I knew there would be some remedy for it in some way. Yes, I sought legal advice—from C. L. Claffin of Bakersfield. Don't think McLeod was present when I was advising with Claffin prior to 1909. It was in the Midway field that this conversation took place in which I advised McLeod of the defects and that I would remedy the same. Don't know exactly where. Can't say just what the conversation was or the extent to which I told McLeod of these defects. Recall discussing this with him only once. I was in New York during 1908. Was president of the Empire Oil and Development Company. The assets of this company was an option on the property known as the Midway of Oregon, some other leases, and a portion of the San Benito property. The Oregon of Midway property was the south half of section 5, and the northwest quarter of section 8, 32-23. I don't remember what other property. No, I don't think the Oregon-Midway property that we had under lease affected the NW.1/4 of section 32. I think the Empire Oil and Development Company also claimed under leases section 32 in 31-23 and

(Testimony of L. B. McMurtry.)

about seven or eight thousand acres in San Benito County, all of which were held under location and were not patented. I don't think any of these lands were held under locations made under this so-called Chicago power of attorney.

Q. The records of Kern County also disclose that there are therein recorded four powers of attorney, one executed on December 20, 1907, by Samuel R. Banks and others; and one executed on December 19, 1907, by Herbert M. Walker and others; another executed by Francis E. Pratt and others on December 19, 1907; and one executed by Frank D. Taylor and others on December 18, 1907, by which these people purported, through and by means of these four instruments, to appoint a man named [679—573] L. B. McMurtry as their attorney in fact for certain purposes therein designated. Are you the L. B. McMurtry whose name appears there? A. Yes, sir. Q. Did you solicit or in any way have anything to do with the execution of these four powers of attorney? A. Yes, sir, in a measure. Q. What did you have to do with the execution of these powers of attorney?

Yes, I caused these original powers of attorney to be prepared. I was not present when any of these people executed these powers of attorney. I asked F. H. Searls, C. W. Thorn, J. B. Thorn, and Edwin L. Powell to get these powers of attorney executed. We had been discussing the financial condition of the Empire Oil and Development Com-

(Testimony of L. B. McMurtry.)

pany and my inability to get back in California in time to get the powers of attorney signed here, because I had to use them on the 1st of January, 1908, and I asked them if they could get me thirty-two locators. They said they could without any trouble. And these powers of attorney were got for the purpose of locating the San Benito lands; and if the property proved to be profitable we would make some money out of it. My impression is that this conversation took place about December 17th. At the time of securing these powers of attorney it was my intention to use them on whatever vacant lands there happened to be in what we felt was the oil belt in San Benito County. These powers of attorney were delivered to me the day I left New York. No, I had no conversation with any of the persons who signed them in regard to the location of lands thereunder, nor did I by writing or otherwise communicate to them any of my plan or intention other than the three named. The only locations made under these New York powers of attorney or contract in 1908, were in San Benito County. The first [680—574] location made under this in Kern County was January 1, 1909. It was the very latter part of 1908 that I determined to use these New York locators in relocating this land in section 32. No, I didn't have any communication with any of the Chicago locators on this subject and did not advise them of my intention to relocate the lands by the use of the New York powers of attorney. No,

(Testimony of L. B. McMurtry.)

prior to the use of the New York powers of attorney I did not advise any of the New York locators of my intention to employ their names upon the northeast quarter of section 32, 31-23. It was some time during August, 1910 that I first advised the New York locators that I had so used their names. Yes, I relocated other lands in Kern County by means of New York powers of attorney which had been located under the Chicago powers of attorney. No, I did not advise the Chicago locators of any of these transactions. Yes, during November and December, 1908, and January, February, March and April, 1909, I observed the progress of the development and improvement that was being placed on the north half of section 32. J. M. McLeod, I believe, had charge of the work under the contract I had made with Mrs. McLeod October 8, 1908.

Q. When did you first contract with J. M. McLeod or Mrs. J. M. McLeod, or any other person, firm or corporation, for the development of the northwest quarter of section 32 after January 1, 1909? A. I cannot give you the exact date, but between the 2d and the 6th of January, 1909. Q. What arrangements were made and with whom were they made? A. Along the lines of that agreement of May, 1909, with a slight exception, but I forget what the difference was; there was a little change in it. Q. With whom did you make that arrangement? A. J. M. McLeod. Q. Did you

(Testimony of L. B. McMurtry.)

carry on these negotiations with Mr. McLeod in January, 1909, because of the negotiations with Mrs. McLeod in October, 1908? [681—575]

A. I do not remember of ever having signed any contract or agreement of any kind with Mrs. J. M. McLeod until, I think, May, 1909. That is the first recollection I have of Mrs. J. M. McLeod being a party to any of these agreements.

Q. (By the COURT.) You saw that contract?

A. Yes, sir, I saw that contract, but I have no recollection of it. Q. Oh, no personal recollection of it? A. I have no personal recollection of it. Q. Well, you knew that prior to January 1st, 1909, Mr. McLeod was carrying on these operations on section 32, did you not? A. Yes, sir. Q. And you knew that you had some arrangement with him by which he was there by your permission and your consent, did you not? A. Yes, sir, undoubtedly. Q. Now, were your negotiations in 1909 and the first part of January, 1909, between you and Mr. McLeod because of the relations which had existed during the months of October, November and December, 1908?

A. I don't think it had anything to do with any agreements that we had prior to January 1, 1909. The new contract was made for the purpose of developing that property under the New York locations. Q. (By Mr. HALL.) Were the terms practically the same under the old as under the new? A. I don't remember, Mr. Hall. Q. Did you attempt to lease this land to anyone other than Mr.

(Testimony of L. B. McMurtry.)

McLeod, or the interests which he represented, after January 1, 1909? [682—576]

A. No, sir. I entered into a written agreement with Mr. McLeod in regard to these lands between January 2 and January 6, 1909. I don't know where that contract is. Don't think it was ever recorded. Don't know what became of it. The last I saw of it was about the middle of May, 1909. McLeod asked me to make a new arrangement—making small change with regard to getting—asked me if I would make out a new agreement, and he surrendered the agreement made along about the first of January, and we made this agreement of May 17th, 1909. Did not advise any of the New York locators of the arrangements with McLeod concerning this land. It was about July 10th that I began to negotiate with representatives of the Associated Oil Company for transfer to them of this land. I dealt with Mr. Scribner through agents Garrett & Watson, which resulted in the contract dated August 4, 1910. The Associated required me to get ratifications of the thirty-two locators and at that time I [683—577] did not have a great deal of money and they agreed to advance me \$5,000 with the understanding that if I did not get the ratifications I would refund the \$5,000, and they advanced me \$5,000 under that arrangement. They demanded that each of the locators sign the form of ratification given me which was prepared by the attorney for the Associated Oil Company, and I

(Testimony of L. B. McMurtry.)

took it to New York in August, 1910, and personally secured some of these ratifications. Did not see these locators all together. Saw them separately. I explained to each one whom I got to sign the ratification just what our deal with the Associated Oil Company was and just what the ratification meant. Some of these men were paid at that time \$250 by checks signed by Mr. Searls. Yes, those were the checks that bore the so-called assignment or release on the back of them. I think I had sent the money to Mr. Searls prior to going to New York. No, this money did not come from the contract with the Associated Oil Company. It would be rather difficult to say whether any of it came from the sale of the lands located under the powers of attorney of the New York people as there was some of that money in my account in the bank, but just what portion of that might have come from the lands I cannot answer. Part of these locators were paid \$250 in September, 1910, and part in September, 1911. They were all not paid in 1910 because I did not have the money. There was some money deposited in the Bank of California under this Associated contract while I was in New York in about September, 1910. I think it was \$25,000, and from time to time I received further payment from the Associated Oil Company on account of this contract of August 4, 1910. Yes, I made the deeds as attorney in fact for these various locators to the Herrin grantees and the Associated Oil Company

(Testimony of L. B. McMurtry.)

took possession of this property under [684—578] this contract. The NW.1/4 of the NW.1/4 of Section 32 was sold by me to the Columbus Midway. We were to receive \$12,000 for this, and I actually received something over \$10,000 for this 40 acres from the Columbus Midway Company. Afterwards the Columbus Midway Company conveyed this land to me. No consideration passed from me to this company for this conveyance except the forfeiture of the payment for the property. I was in New York approximately two months, on this visit in September, 1910, then returned to California and again visited in New York in 1911. No, I had no communication with any of these locators between these two visits save and except Mr. Searls. When I went to New York in 1911, I delivered a thousand shares of stock to each one of the locators—stock of the Pacific Oil Lands Company, which was organized some time in August, 1911. The first assets of this company were the agreements with the Associated Oil Company, which were assigned to it by the locators. Yes, these agreements involved not only the lands in controversy in section 32, but lands in sections 24, 26, 20 and the other lands affected by those contracts of August 4, 1910. The Pacific Oil Lands Company paid its stock for the assignment of these contracts. The entire capital stock was issued to me. After the assignment of this contract of August 4, 1910, which was in September, 1911, the payments under the contract were made to the Pa-

(Testimony of L. B. McMurtry.)

cific Oil Lands Company. I don't know that there was any particular rule worked out as to why one thousand shares of stock were given to each of the locators. I thought that that was what they were entitled to. Yes, I determined the question as I did the amount of \$250 which was paid to each of them in 1910 and 1911. I believed that that was what the locators were entitled to at that time and I gave that \$250 for [685—579] all of their title and interest in and to that property under location. Subsequent to my getting this receipt or release in full from the locators, it was necessary for me to use those locators' names again in order to make the transfer—the agreement to the Pacific Oil Lands Company, and then to get a further release I gave them this thousand shares of stock and got a final release which was secured when I delivered this stock to them in New York in 1911.

Q. You referred to a release which you said you got at the time you delivered this thousand shares of stock to those various oil land locators. I invite your attention now to a release dated September 11, 1911, which reads as follows: "Received of L. B. McMurtry one thousand shares of Pacific Oil Lands Company"—dollars crossed out—"in full of all claims and demands growing out of power of attorney given by me to him of date December 21, 1907. (Signed) Frank B. Chapman."

Now, that is a photographic reproduction, as I understand it, of the original? A. Yes, sir.

I secured a similar release from each of the

(Testimony of L. B. McMurtry.)

locators except Meinecke and Darling. No, after I delivered to each of these locators this thousand shares of stock in 1911, I did not give any of them anything else on account of the fact that they executed this power of attorney or that their names appeared upon these various locations. Yes, I continued to be a stockholder in the Pacific Oil Lands Company and the Associated Oil Company continued to make payments under these contracts or contract of August 4, 1910. The payment of the \$250 and the thousand shares of stock of the Pacific Oil Lands Company covered the entire lands affected by the contracts with the Associated Oil Company, and was all the locators were given [686—580] on account of any other locations upon which their names appeared as locators. I advised the locators whom I saw when the stock was given them to keep this stock under all circumstances and not let it go out of their possession.

Q. There has been offered in evidence four locations covering section 27, township 32, range 23, another quarter of 27, another quarter in 27, and all four quarters in section 27, township 31, range 23; and the name L. M. Cox appears as a witness to the posting of those locations. Do you know anything about them? A. No, sir.

No, I don't remember having conveyed those locations to any person, nor do I know anything about the posting of these notices on July 16, 1909.

Q. I now invite your attention to four locations made on the four quarters of section 20, township

(Testimony of L. B. McMurtry.)

31, range 24 east, upon which the names of these New York locators appear as the locators, and the witness is E. W. Kay upon the location notice; and I also invite your attention to a deed made on the 17th day of March, 1910, by which these thirty-two people acting by L. B. McMurtry as their attorney-in-fact conveyed these four locations to J. M. McLeod. Do you know anything about that transaction?

A. I do not remember the transaction.

I had a transaction with Mr. McLeod in regard to some of this property, but I don't remember the section or township or [687—581] range or in fact the conditions connected with it.

Q. I now invite your attention to exhibit 27, which consists of thirty-two or thirty-three location notices, upon which the names of the New York locators appear, the location notice purporting to have been posted on the ground on January 1, 1909 and also in the same exhibit to a deed dated April 9, 1909, between the locators, through you as their attorney in fact, conveying these thirty-two or thirty-three locations to J. M. McLeod. Do you remember anything about that transaction? A. No, I do not.

No, there was no consideration passed from Mr. McLeod to me, not at that time.

Q. Can you, after glancing over either one of the exhibits 25 or 27, which I have shown you, tell me whether or not you now remember how it came about that these locations were made and the con-

(Testimony of L. B. McMurtry.)

veyance of them made by you to McLeod? A. Yes, sir. A. Will you please tell the Court? A. When this land was located in the Buena Vista Hills, we did not know that it was oil land. I fully realized at that time that it was necessary, if I was ever going to get a hold of a piece of oil territory to get it during the first of 1909. The powers of attorney were used—J. M. McLeod and one or two other parties—for the purpose of locating tracts of land in different places, with the hopes that some place somewhere we would get a tract of land that would produce oil. The agreements, I think, in all cases subsequent to the locations were that they were to develop the property, and the locators were to have a quarter of the entire property. Q. And did that agreement cover all of these thirty-two or thirty-three? A. Yes, sir. A. And that was to be the locators' portion out of that? A. Yes, sir. Q. And [688—582] who was to convey that to them? Was McLeod to convey it to them, or how was it to be done? A. That was to be conveyed by Mr. McLeod, yes, when the property was proven to be oil land, but not until that time. Q. And did you have that arrangement with McLeod prior to January 1, 1909, at the time these location notices were posted? A. No, sir. The agreement was made sometime subsequent to the locations.

Mr. ACH.—Mr. Hall, the date of that location you told me was January 1, 1909?

Mr. HALL.—The thirty-two or thirty-three.

(Testimony of L. B. McMurtry.)

Mr. ACH.—And the deed which was executed in April?

Mr. HALL.—Yes, April 9, 1909.

No, I don't think I had any conversation with McLeod prior to January 1, 1909, about making those thirty-two or thirty-three locations—have no recollection of it.

Q. And there is a group here which were apparently located; it is Exhibit No. 26, Mr. Ach—which were conveyed to David Kinsey.

Mr. ACH.—Now, wait a minute. That date of that location is January 1, 1909.

Mr. HALL.—That is, of the McLeod location.

Mr. ACH.—No, this last—this Kinsey location.

Mr. HALL.—1st day of January, 1909, is one of them. I don't answer for all of them.

Mr. HAMEL.—They are all that date.

Mr. ACH.—That is, the thirteen, is it?

Mr. HALL.—Yes, that is the thirteen. And they were conveyed to Kinsey on the 5th of February, 1909.

Q. What was the arrangement with Mr. Kinsey in regard to that group of locations? A. Just the same as the agreement with Mr. McLeod—the same conditions. [689—583]

Of this group of thirty-three locations involved in the McLeod agreements one-quarter interest was to be returned to the locators. I had no agreement with McLeod as to what I personally was to get out of it. Yes, I eventually entered into some contracts with McLeod respecting sections 20, 22, 24,

(Testimony of L. B. McMurtry.)

26 and 34 on May 17, 1909. Yes, at this time, between January 2 and January 6, 1909, when I entered into this agreement with McLeod with regard to section 32, which was torn up; I also entered into a contract with McLeod with respect to sections 20, 22, 26 and 34. It may have been possible that we did not enter into a signed agreement on that date. If we didn't, however, we agreed on what Mr. McLeod was to have in those sections for the purpose of going ahead and putting a derrick on each quarter-section and putting a well down on each section. It is rather difficult to remember so far back, but I do not recall any negotiation concerning these lands other than section 32 prior to this agreement about January 2 to January 6, 1909. Yes, I think prior to making this location on section 32 under the New York powers of attorney I advised McLeod of the defect in the so-called Chicago locations. "Either he or Mr. Atwood spoke of it, I don't remember; one of us. No, I did not advise McLeod of the manner in which I intended to cure those defects. I think I first advised McLeod of the relocation of these lands under the New York powers of attorney about January 3. Yes, I think there was some discussion as to what would be done with the contract of October, 1908. I am not positive about that. We went to Judge Claflin's office and I remember that we discussed the matter of making out a new agreement under the New York locators. No, McLeod did not pay me any money for making out the new

(Testimony of L. B. McMurtry.)

contract. I think Judge [690—584] Claflin told me that the locations made in 1907 had lapsed on the 31st of December, 1908, and that the property had been relocated, or these New York locations, and that we would make out a new agreement with him under the New York locations. When I went to Judge Claflin's office, I told him what I had done—I had relocated this property, and McLeod came in shortly and the Judge told him then for the first time that section 32 had been relocated, and to use a mild expression; Mr. McLeod was a little peeved at the method we had taken in relocating that property and he wanted to know what position he was going to be put in. "How am I going to protect myself? How am I going to protect the people who have invested their money in here?" And the Judge told him to make out a new contract or new agreement under the new locations; that we could not continue on the locations of 1907 because we could not positively—could not make a transfer. And there was no method that I knew of that could remedy the defect.

Q. The time you relocated the land with the New York locators on January 1, 1909, did you intend to abrogate the contract of October, 1908, and thereby deprive Mr. McLeod and his associates from the rights which had accrued to them under the contract of October, 1908? A. I intended to permit the locations made in 1907 to lapse on the 31st day of December, 1908; to relocate the 1st of January, 1909, with these so-called New York locators and make a new contract with J. M. McLeod. [691—585]

(Testimony of L. B. McMurtry.)

Cross-examination.

By Mr. ACH.—In answer to counsel's request for dates and amounts of payments * * * I have this statement and will read it into the record. (Reads statement as follows:)

CASH PAYMENTS ACCOUNT PURCHASE OF
McMURTRY LANDS.

1910.

Aug. 5.	L. B. McMurtry.....	5,000.00
Sept. 22.	L. B. McMurtry	60,000.00
20.	L. B. McMurtry	25,000.00
Aug. 10.	Douglas Watson Commis- sion.....	2,500.00

1911.

June 22.	L. B. McMurtry.....	82,500.00
Dec. 13.	L. B. McMurtry.....	2,500.00

1912.

Feb. 8.	L. B. McMurtry & Pac. Oil Lands Co.....	7,746.00
8.	Associated Supply Co. % Garrett & Watson.....	1,106.57
27.	L. B. McMurtry & Pac. Oil Lands Co.....	8,750.00
27.	Associated Supply Co. % Garrett & Watson.....	1,250.00
Mar. 1.	L. B. McMurtry & Pac. Oil Lands Co.....	8,750.00
1.	Associated Supply Co. % Garrett & Watson.....	1,250.00

Apr. 1.	L. B. McMurtry & Pac. Oil Lands Co.....	8,750.00
1.	Associated Supply Co. % Garrett & Watson.....	1,250.00
May 1.	L. B. McMurtry & Pac. Oil Lands Co.....	8,750.00
1.	Associated Supply Co. % Garrett & Watson.....	1,250.00
June 1.	L. B. McMurtry & Pac. Oil Lands Co.....	8,750.00
1.	Associated Supply Co. % Garrett & Watson.....	1,250.00
July 1.	L. B. McMurtry & Pac. Oil Lands Co.....	8,750.00
1.	Associated Supply Co. % Garrett & Watson.....	1,250.00
Aug. 1.	L. B. McMurtry & Pac. Oil Lands Co.....	8,750.00
1.	Associated Supply Co. % Garrett & Watson.....	1,250.00
Sept. 2.	L. B. McMurtry & Pac. Oil Lands Co.....	8,750.00
2.	Associated Supply Co. % Garrett & Watson.....	1,250.00
Oct. 1.	L. B. McMurtry & Pac. Oil Lands Co.....	8,750.00
1.	Associated Supply Co. % Garrett & Watson.....	1,250.00
Nov. 1.	L. B. McMurtry & Pac. Oil Lands Co.....	8,750.00
1.	Associated Supply Co. % Garrett & Watson.....	1,250.00

Dec. 2.	Pacific Oil Lands Co.....	8,750.00
2.	Associated Supply Co. %	
	Garrett & Watson.....	1,250.00

1913.

Jan. 2.	Pacific Oil Lands Co.....	8,750.00
2.	Associated Supply Co. %	
	Garrett & Watson.....	1,250.00
Feb. 1.	Pacific Oil Lands Co.....	8,750.00
1.	Associated Supply Co. %	
	Garrett & Watson.....	1,250.00
Mar. 1.	Pacific Oil Lands Co.....	8,750.00
Mar. 1.	Associated Supply Co. %	
	Garrett & Watson.....	1,250.00
Apr. 1.	Pacific Oil Lands Co.....	8,750.00
1.	Associated Supply Co. %	
	Garrett & Watson.....	1,250.00
May 1.	Pacific Oil Lands Co.....	8,750.00
1.	Associated Supply Co. %	
	Garrett & Watson.....	1,250.00
June 2.	Pacific Oil Lands Co.....	8,750.00
2.	Associated Supply Co. %	
	Garrett & Watson.....	1,250.00
July 1.	Pacific Oil Lands Co.....	8,750.00
1.	Associated Supply Co. %	
	Garrett & Watson.....	1,250.00
Aug. 4.	Associated Supply Co. %	
	Garrett & Watson.....	20,937.33

[692—586]

Aug. 4.	Pacific Oil Lands Co.....	20,000.00
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Aug. 4.	Pacific Oil Lands Co.....	54,680.00
4.	Associated Oil Co. % Pac. Oil Lands Co.....	20,320.00
4.	Garrett & Watson.....	56,700.00
Sept. 2.	Pacific Oil Lands Co.....	20,000.00
Oct. 1.	Pacific Oil Lands Co.....	20,000.00
Nov. 1.	Pacific Oil Lands Co.....	20,000.00
Dec. 1.	Pacific Oil Lands Co.....	20,000.00
1914.		

Jan. 2.	Pacific Oil Lands Co.....	20,000.00
Feb. 2.	Pacific Oil Lands Co.....	20,000.00
Mar. 2.	Pacific Oil Lands Co.....	20,000.00
Apr. 1.	Pacific Oil Lands Co.....	20,000.00
May 1.	Pacific Oil Lands Co.....	20,000.00
June 1.	Pacific Oil Lands Co.....	20,000.00
July 1.	Pacific Oil Lands Co.....	20,000.00
Aug. 1.	Pacific Oil Lands Co.....	20,000.00
Sept. 1.	Pacific Oil Lands Co.....	20,000.00
Oct. 1.	Pacific Oil Lands Co.....	20,000.00
Nov. 1.	Pacific Oil Lands Co.....	20,000.00
Dec. 1.	Pacific Oil Lands Co.....	20,000.00
1915.		

Jan. 2.	Pacific Oil Lands Co.....	20,000.00
Feb. 1.	Pacific Oil Lands Co.....	20,000.00
Mar. 1.	Pacific Oil Lands Co.....	20,000.00
Apr. 1.	Pacific Oil Lands Co.....	20,000.00
May 1.	Pacific Oil Lands Co.....	20,000.00
June 1.	Pacific Oil Lands Co.....	20,000.00
July 1.	Pacific Oil Lands Co.....	20,000.00

(Testimony of L. B. McMurtry.)

Aug. 1.	Pacific Oil Lands Co.....	20,000.00
Sept. 1.	Pacific Oil Lands Co.....	20,000.00
Oct. 1.	Pacific Oil Lands Co.....	20,000.00
Nov. 1.	Pacific Oil Lands Co.....	20,000.00
Dec. 1.	Pacific Oil Lands Co.....	20,000.00
1916.		

Jan. 2.	Pacific Oil Lands Co.....	20,000.00
Feb. 1.	Pacific Oil Lands Co.....	20,000.00
15.	Pacific Oil Lands Co.....	812,353.18

\$1,951,343.08

Mr. ACH.—Yes, these are payments made by the Associated Oil Company to McMurtry, Garrett & Watson, and the Pacific Oil Lands Company by reason of and in fulfillment of the contract of August 4, 1910, and its supplemental and amendatory contracts.

WITNESS.—Yes, Plaintiff's Exhibit No. 45 was delivered to me on or about the date of its acknowledgment, November 22, 1912, and [693—587] was intended as an absolute conveyance to me by the Columbus Midway Oil Company of the particular 40 acres of land described, and the possession of such land was then surrendered to me, and no one has been in possession thereof since then except myself. I never attempted to construct any oil well on this property. There was then a little cabin on it which is still there. I believe also a derrick and equipment had been moved there before I took possession, and I have taken no equipment off the

(Testimony of L. B. McMurtry.)

property. Yes, there was an abandoned hole on the property. A well had been drilled to 2,800 or 3,000 feet and abandoned and the casing pulled—all that could be pulled—and the water shut off and the derrick taken down, and all buildings, casing and machinery of all kinds moved from the property. Since then I have taken no steps of any kind to build anything on that 40 acres or threatened or asserted that I would drill any oil well on it or strike any oil therefrom. Yes, under these so-called Chicago powers of attorney I located some land in San Benito County in 1904. The individual I spoke to about obtaining these powers of attorney was Mr. Shadburn. No, he was not a locator on San Benito land. Yes, I had relatives living in California or on the Pacific Coast in 1903 and 1904, probably 14 or 15. I was friendly with them all. I talked with Mr. Shadburne in Chicago. Yes, he was a citizen of the United States. No, I did not state to Mr. Shadburne or insinuate to him that I desired him to obtain powers of attorney from individuals whom I could subsequently control in any way, or tell him that I wanted 32 people to act as locators for my benefit or men who would transfer to me any interest which they acquired in any property that I might locate in their names. No, no lands were located in the name of John B. Thickens in California. Yes, I was friendly with him in 1907-9, and think he was a citizen of [694-588] the United States. Was also acquainted and friendly with his wife. Yes, I had many acquaintances in

(Testimony of L. B. McMurtry.)

California during 1903—1909. At the time of obtaining these powers of attorney in 1907, when I said that I would not have time after I got back to California to do what I wanted to do and asked these four gentlemen to go out and secure these powers of attorney, what I meant was that I had to be on the ground, and *and* use the powers of attorney on the 1st of January, 1908. That necessitated my getting to California—leaving San Francisco about the 27th or 28th of December. Yes, I then had in mind locating certain lands situated in San Benito County and meant that after I got out to California I would not have time to go out and see different people and get them to locate the lands. “It was my intention to leave New York in sufficient time to get what locators were required in California; but I had to wait some little time in New York in order to get funds to get back to California, I was having some bonds sold. And up to the 17th of December—on the 17th of December, I realized that my time was getting very short, and it was then I asked those gentlemen—those four gentlemen—to get those thirty-two locators. The object in getting thirty-two locators was that along sometime in 1902 or 1903 the Receiver—I think it was—at the Visalia Land Office, in discussing locations of property, made a statement that you never could—” (Objection.)

I understood from the local land officers that I could not make two contiguous locations with the names of the same locators, and it required thirty-

(Testimony of L. B. McMurtry.)

two people to locate a section of ground. That was the object in getting the thirty-two locators. When I asked Thorn, Searls, Powell and Thickens to get these powers of attorney I said nothing about what they were to get. I asked them simply to get thirty-two locators to locate San Benito property. [695—589] Didn't say anything about the character of the men desired. I remember at one time making the remark that I didn't want any saloon-keepers, but I certainly wouldn't have made that remark to those four gentlemen, because none of them were frequenters of saloons. Didn't ask them to get individuals whom they could influence or control in the event that locators were made in their names and made no suggestions as to any particular person or persons. Yes, I was familiar with the workings in California, prior to December, 1907, of land supposed to contain oil which were located by individuals, so far as developing the land was concerned, or obtaining the means of developing, in the Sunset, Midway, and Coalinga oil districts. Yes, it was a general thing for men who located lands, after the location to look about and find someone of capital and means who, for an interest in the land would put up funds for the purpose of developing the property, contract to put down wells for certain interests in the property. The lands which I located under these New York and Chicago powers of attorney were arid, desert lands, at that time unproved as to oil character and remote from habitation and water. Yes, I knew in 1903 and from that time onward that it was a cus-

(Testimony of L. B. McMurtry.)

tomary thing in the State of California for the same set of people to locate in possible or probable oil fields or mining districts, large areas of land. Yes, that was generally indulged in in California. No, I did not, prior to August, 1910, at the time of securing the ratifications and the date of some of the powers of attorney with the endorsements on the back, ever make a request of either one of the New York locators, directly or indirectly, or either of the persons who had delivered the powers of attorney to me, to execute any kind of an agreement or declaration that the located property belonged, in whole or in part, to me, or that I had any interest therein. Nor [696—590] did either of these Chicago or New York locators at any time promise me, directly or indirectly, that any nominee of mine would be given any interest in the property located in their names. Yes, I testified on direct examination that the Oregon Midway abandoned in 1905 the N. $\frac{1}{2}$ of section 32, the northeast quarters of 8 and 9, three quarters of section 10, and a part of section 4, which had been located in 1899. There had been some holes dug along in 1900 or 1901 and assessment work done and proofs filed. When I say it was abandoned in 1905, I mean the locations expired by limitation, because they ceased to do any assessment work, and that was then regarded as an abandonment. That was a general custom in the field at that time to look upon property as abandoned where what was called assessment work had not been done, even though there had been no discovery upon the property. Yes, it was the

(Testimony of L. B. McMurtry.)

practice in the field at that time to go out and dig a trench, it didn't make any difference what kind of a trench it was, four or five feet, or three or four or five feet long, and four feet deep, and four or five feet wide, and spent one hundred dollars on it, that constituted, in the custom of the district, one hundred dollars worth of work, and this right would be recognized by the neighbors. No, sir, January, and all through 1907, there was practically no development work going on in the section known as Buena Vista Hills, Midway, and North Midway districts. Yes, I knew at the time I located in the Chicago people's names and at the time I located in the New York people's names that in order to get a patent from the Government a discovery of oil on the land was necessary. I knew what equipment was necessary to drill a well and the expense. I knew it was necessary to have a discovery on each location. I expected to get outside capital to develop the property by giving them a portion of it, one-half of it, or three-fourths of it, as [697—591] the case might be—whatever was necessary to get the property developed. I didn't have the means. I knew that I couldn't get any money from the locators; they had been represented to me as men who were working for small salaries, and it devolved upon me to get this property developed. In 1907 and 1908, a well to the depth of 2,000 to 3,000 feet in the Midway District would cost anywhere from \$60,000 to \$120,000. I think the minimum would have been \$45,000. The Midway oil district was not then known as a proven

(Testimony of L. B. McMurtry.)

field. I think the first well on the northwest quarter of 32, involved in this case, was drilled in in May, 1909, and it was a pioneer well in that part of the field. No, none of these Chicago locators, prior to the end of the year 1908, advanced or offered to advance to me the cost of the locations or assessment work on any part of the property that was located in their names; nor did I have any funds in my possession from them, or either of them, for that purpose. These Chicago location notices were posted in 1907 by Major Hoeppe, E. D. Burge and myself, under the original powers of attorney, which we then had. Yes, I discovered, in November, 1908, I think, that there was an error, not only in the names of some of the locators, but also in the description of the property. Yes, at the time I made this discovery of errors I had already made an arrangement with McLeod concerning the development of section 32. I discovered that the stakes that we made our locations by were approximately one-fourth of a mile out of line. Took this matter up with Judge Claffin, of Bakersfield, and was advised that the misdescribed locations or locations in which there were errors in the names were bad. The locations on the north half of 32 in 1907 were in reality on the south half of that section. I discovered this subsequent to my arrangement with Mrs. McLeod in 1908. No, I did not mention this to McLeod or to anyone claiming under him. I certainly did [698—592] not; they would have located the property themselves on the 1st of January. There was no reason why they should not, had

(Testimony of L. B. McMurtry.)

the land been open to location. I don't believe McLeod would have done that, but I believe any of his associates would. Yes, it was regarded as rather unprofessional to do this.

"Q. At the time that you ascertained the discrepancies in the names, comparing the locations with the powers, did you then at once notify McLeod or those with whom he was operating upon that property, or did you keep it to yourself for a while? A. I think the matter was discussed when we first—Mr. Atwood told us about the discrepancies in the power of attorney." That was in November, 1908. My recollection of my conversation with Judge Claflin when I told him the conditions is that I asked him first if there was any remedy, and he said that he didn't know of any. He asked me when my locations would expire and I told him on the 31st day of December, 1908, and he said, "You had better arrange to relocate your property on the 1st of January, 1909." I don't remember that we took up the matter in regard to the location notices not being on this particular ground; but this alluded to all of the locations that I had. The notices of January 1 were prepared in the Midway camp by Mr. F. E. Harrison, Major Hoeppner and myself. I posted the notice on the northwest quarter of section 32 on January 1, 1909, a few minutes after midnight of December 31st. I was alone. Everyone was busy posting them on other lands. By others I mean Kay, Harrison and Hoeppner. No, I had not advised McLeod or anybody in the employ of the California Midway Oil

(Testimony of L. B. McMurtry.)

Company, or anybody in the employ of Mrs. McLeod, or any of the other parties who became interested in the development of that quarter-section of land that I was going to relocate. Yes, somewhere between January 2 and January 6, 1909, I made a new contract with [699—593] McLeod concerning the development of this quarter-section under the New York locations. I drove with McLeod from the Midway field to Bakersfield on the 2d of January and the next morning at nine o'clock I was in Judge Claflin's office in Bakersfield and told Claflin what I had done—that is, that I had relocated this property and had the locations with me, and in a short time McLeod came in and Judge Claflin told him that I had relocated the property and Mr. McLeod said some things that would not look well on the records, and wanted to know what protection he was going to have, that they had spent their money, and he had borrowed it, and had people associated with him. The Judge told him that we would give him a contract under the New York locators that would protect him, and he demanded it immediately. I remember that distinctly, because he was still, as I said, peeved, and he demanded an agreement right away, and it was made out during the time that I was at Bakersfield. Yes, that was the first time McLeod knew the property had been relocated. Don't think he knew anything about it until I told him about it at that time. No, I didn't talk to him about it on the way from Midway to Bakersfield in the machine. Preferred to wait until we got to Bakersfield. Am

(Testimony of L. B. McMurtry.)

not sure whether McLeod had begun to drill on this property before January 1st. Practically all the work that was done upon that quarter-section was done subsequently except the erection of the derrick. The California Midway well No. 1 on this property was completed I think in January, 1910. From the date I made my arrangements with McLeod they continued incessantly and diligently to drill upon the property up to the time of the completion of that well in January, 1910. I know this by their records, and being there a great deal of the time in 1909. We had a man in our cabin there 500 or 600 feet from where they were drilling, and he made two reports a week to us, and we knew [700—594] that they were at work all the time. They were to develop this land for the entire quarter-section, and we were interested in knowing that they were at work. The contract made in the early part of 1909 with McLeod was the same as the one made May 17, 1909 (Plaintiff's Exhibit 33), save and except that there was a little difference in taking care of the patent. Yes, in 1908 there was a dispute between myself representing the locators and the Wible-Haberkern crowd, which was settled by my releasing the south half of 32 and their releasing the north half of 32. This in turn necessitated an adjustment of my arrangements with McLeod whereby his operations were limited to the south sixty acres of the northwest quarter of section 32. This was all determined prior to January, 1909. This compromise was concluded in the early part of November, 1908, and was after my

(Testimony of L. B. McMurtry.)

making the contract with McLeod and before I made the new locations. I made a subsequent contract with McLeod on November 11, 1908.

“The COURT.—So that under the New York powers of attorney the only portion of this section that was located was the north half? Mr. ACH.—Yes. The COURT.—He did not locate the south half? Mr. ACH.—I am just going to ask him that question. Q. (By Mr. ACH.) Now, when you first located the land for the New York locators did you locate the southwest quarter or the southeast quarter of that section, in January, 1909? A. There is a hard thing for me to answer. I don't remember. It seems to me that I located the entire section.”

I am not positive. I remember very distinctly of placing the locations on the northeast and the northwest quarters, but I am not satisfied, however. (Location notices dated January 1, 1909, covering the southeast and southwest quarters of said section in evidence, being Plaintiff's Exhibit 14 and 15.) No, from the [701—595] time I had this interview with McLeod in Claffin's office in January, 1909, I did not assert or claim that any of the work that was done upon that property prior to January, 1909, was done for the benefit of the Chicago locators; nor had I any intention after that date, nor did Mr. McLeod ever express any intention to hold or attempt to claim under the Chicago locations. We considered that the Chicago locations were absolutely void and expired on the 31st of December, 1908. When I was endeavoring to have this land

(Testimony of L. B. McMurtry.)

developed McLeod came along at the psychological moment and offered to take the property and develop it—that is, put up a derrick on each quarter, drill a well on every section,—first put one well down to see if it was oil land, and if it proved to be oil territory then to put a well down on each quarter-section where he already had a derrick erected. McLeod began work on the northeast quarter I think in October, 1908, and prior to January 1, 1909, had erected a derrick at a cost of about \$1,000, and put a building there. But the location notices left me in a position where I could not make any transfer. I didn't know that there were such men in existence as I had on that power of attorney—or on the certified copy of the power of attorney. Yes, the written contract with McLeod provided for the putting up of a derrick on the very center of the section in order to prove up on all four quarters, on the theory that a well in the very center would demonstrate oil in each of the four quarters, and after this contract of October, 1908, with McLeod, an attempt was made to build a derrick in the middle of the section. Then the settlement with the Wible-Haberkern people was made between October 26 and November 1, and a new arrangement was made with McLeod, and this derrick which had been put in the center of the section was moved in order to get onto the northeast quarter. Yes, it is a fact that while I had contracted [702—596] with McLeod concerning the north half of 32 on the basis of the Chicago locations, locations in these names were never actually

(Testimony of L. B. McMurtry.)

legally made on the north half of the section. No, I never promised the men who I got to secure these Chicago powers of attorney or the New York powers of attorney any money or reward for so doing. When I went to New York in August, 1910, my arrangements with the Associated Oil Company were that the ratifications of these New York powers of attorney must be obtained. My attorney in these negotiations with the Associated Oil Company was Walter S. Brann. I knew that Henry Ach represented the Associated Oil Company, but I had no conversation with Mr. Ach prior to May, 1917, except that I met him once in his office during the negotiations, at which time he asked me if the locators were *bona fide* men and if they were all alive and real men, and my response was that they were all *bona fide*, real live locators. Yes, at the time these negotiations with the Associated were taken up there had been for some months a producing well on the northwest quarter of 32—this California Midway Oil Company well. In making these Chicago locations I relied upon old stakes on the ground, but before making the New York locations I actually had the land surveyed. I found afterward that none of the Chicago locations were actually made on the northwest quarter of 32, or on any portion of section 34. The location notices on the north half of 34, when the new survey was made and we discovered the charcoal corners, so we were positive we were right, were all on section 29, and the location notices that I placed on the south half of 32 were on the north

(Testimony of L. B. McMurtry.)

half of the section. No, in attempting to locate the northwest quarter of 32 for the Chicago locators, I did not get a location notice on the northwest quarter of 32, and the same applies to section 34. (Attention called to Defendants' Exhibit "F.") Yes, I read and [703—597] discussed that letter with Mr. Watson and my attorney, Mr. Brann. (Attention called to Defendants' Exhibit "H.") Yes, I saw that letter before it was sent, and authorized its being sent. Yes, subsequently to those communications the plan of action was changed, I think by the Associated Oil Company. It is my understanding that that plan was not approved, but a different suggestion came from their attorney, Mr. Ach. Yes, this contract dated August 4, 1910 (Defendants' Exhibit "K"), was signed and acknowledged by me personally and as attorney in fact prior to its delivery. Yes, there was a direct understanding with Mr. McLeod, Mrs. McLeod and the Thirty-two Oil Company, through McLeod, prior to May 17, 1909, that the work which was being done by himself, or his assignors—California Midway Oil Company—upon all of the northwest quarter of section 32 should inure to the benefit of the mining location claim made by the New York locators. Yes, that understanding was prior to the discovery of oil and prior to the May 17th contract. Yes, by reason of these misdirections I regarded all of the Chicago locations invalid at the time I made the locations in the names of the New York locators on January 1, 1909. I did not know that these locations were

(Testimony of L. B. McMurtry.)

wrong until we made the surveys. Then I didn't take anyone into my confidence, because if I did this property would have been located by other people, and I kept it to myself absolutely. The only people that knew that those locations were not properly made or were imperfect were the surveyors. No, up to the time I made this assignment of December 30, 1909 (Plaintiff's Exhibit 31), I think there were no other contracts outstanding made for or on behalf of these New York locators, other than those named in that instrument. No, I think that Kay, Harrison and Searls had not then been paid for their services. Yes, I was then indebted for my operations in the Midway field and had no security from the New York locators for the [704—598] repayment of any such indebtedness. My recollection of this assignment is just a bit hazy, but I believe that my conveyance to Claflin and his practically immediate reconveyance to me individually (Plaintiff's Exhibits 30 and 31) were for the purpose of convenience in handling these different agreements, and not having to sign the names of all of the locators, in event of any transfer or anything of that kind. That is the only recollection I have of that. No, I never had in my possession nor was there executed any contract by me with these New York locators, or any of them, to the effect that they would not at any time revoke the powers of attorney I had received from them. Yes, at the time I made this contract of August 4, 1910, with the Associated Oil Company concerning section 32 I had

(Testimony of L. B. McMurtry.)

transferred to McLeod, in May, 1909, the whole of the northwest quarter of section 32, accompanied with the agreement which showed that he was to apply for patent and hold the north 100 acres for the benefit of the locators. Yes, the situation shown by these various contracts was the condition of the title to the northwest quarter of section 32 at the time I entered into this contract with the Associated Oil Company in August, 1910. No, during the negotiations leading up to this contract I did not claim that I was the sole party in interest, or that the New York locators did not have any right, title or interest, or claim, to that land or the benefits to be derived therefrom. I don't remember of ever making any statement to anyone during these negotiations that I had any interest in the lands. Those representing the Associated Oil Company in this negotiation required a ratification from each of the New York locators of the power of attorney, and I went east to secure the same, returning about October, 1910. While away I drew about \$9,000 of the money which had been deposited by the Associated Oil Company. Don't know whether any of this money was drawn down [705—599] while I was away, but think Major Heoppner had authority to do so. I either sent back or brought with me 31 of these ratifications—all except that of Daniel W. Darling, who I learned was deceased. Made efforts to secure a ratification from his estate or representatives thereof. Believe I had a ratification signed by Mrs. Daniel Darling, Elizabeth Darling, whom I

(Testimony of L. B. McMurtry.)

found at Worcester, Mass. Took the matter up with her attorney, who secured her signature to a ratification, and later, after the estate was administered on in Kern County, California, I got a deed for her interest. The transaction was not closed until the estate had been administered upon and the Darling interest deeded to me. It was then found that Darling had left a will providing for \$1,000 to certain relatives, and the Associated Oil Company further demanded that I obtain a release from these legatees or furnish full and complete guaranty against any claim by them. My attorney, Mr. Brann, looked after this administration in Kern County for me, such proceedings being instituted at my request for the purpose of obtaining a distribution to me under the deed of Mrs. Darling, of the residuary legatee, of whatever interest Mr. Darling had in those lands: yes, that is true. To all of those locators, whom I personally saw in securing these ratifications, I am reasonably sure I gave \$250 at that time. No, I didn't tell them that I was giving them this money as compensation for signing the ratification, or as compensation for permitting me to use their names in making the locations. All those I saw read the ratification before signing. Don't know that any promise was made by others who secured some of these ratifications of future payment of \$250. So far as I know, no such promise was made, and I didn't authorize such a promise. I selected no particular individuals to see myself, just saw those whom it was convenient to see. There were a cer-

(Testimony of L. B. McMurtry.)

tain number of these fellows that [706—600] were around close by that I could reach. Others were out of town and it took some time to get those. Yes, those who received the \$250 check at the time of signing the ratification endorsed their names under the typewritten matter on the back of the check releasing their interest. Some who signed ratifications in 1910 did not receive a check or any money—probably 14 or 15. No, I didn't tell any of those to whom I gave \$250 not to tell the other locators who signed the ratifications that they had transferred their interests or that they had received money. Yes, some of these locators who did not receive the money at the time of signing the ratifications didn't receive any money until fully a year later. Yes, it is a fact that one of these locators, Hamlin E. Hatch, in 1914 or 1915, commenced a suit in California against me for an accounting in this matter which was compromised by my attorney by the payment of a little more than \$520, but I don't know how much. (Mr. Brann says it was \$1250.) Yes, I had forgotten this during the direct examination. No, I never told Sue Greenleaf at any time that she could buy the interest of Frank Searls in locations which were made and which I quitclaimed to her, at any time for \$250. Have known here since about 1902. (Attention called to Plaintiff's Exhibit 17 to 24.) I didn't have anything to do with those location notices. Miss Greenleaf, in making these locations and using our locators' names, was doing the same thing and under the

(Testimony of L. B. McMurtry.)

same arrangements that were made with Mr. McLeod on locations that he made over in the Elk Hills and other places. Miss Greenleaf represented that she had \$60,000 on hand ready to develop that property, and after the property was developed—that is, if it proved to be oil property—25 per cent of the property was to be deeded to the New York locators. If she developed an oil territory, she was to deed a one-fourth interest back—if it proved valuable [707—601] property we were to get a fourth interest—that is, the locators were. No, there was no written agreement to that effect. No, Miss Greenleaf had nothing to do with the locations which were made on January 1, 1909, involved in these transactions, including section 32. All agreements were made subsequently to the location. We did not make any agreement in regard to the amount of land that they were to have or the interest they were to have until after the locations were made—I think about the time I gave her the deed. Yes, at the time I made these locations in 1909, and the attempted locations in 1907, they were in the habit of locating very large tracts of land. I know in one case between McKittrick and Sunset of one concern locating 190 some odd quarter-sections, and there were many other cases throughout the field. It was customary to locate large tracts of land. You were taking a desperate chance anyhow. We didn't know that it was oil territory. And there was a possibility that by locating a large tract of land you might get a piece of land that was oil-bearing. No, in

(Testimony of L. B. McMurtry.)

making these locations, including the northwest quarter of 32, I had no intention of defrauding the Government or of obtaining personally a greater amount of land than I could directly under the law. No, prior to the making of these locations by McLeod in the names of the New York locators (Plaintiff's Exhibit 25), there were no arrangements with McLeod as to what he would do upon those locations or what he would get for developing them. After they were made it was understood that McLeod was to develop the territory, and that if it proved oil-bearing the locators were to get 25 per cent, and McLeod the other 75 per cent. No, I did not have the money then to do the developing. Yes, in making this arrangement I thought I was benefiting the locators whose names were used. [708—602]

Stipulated, that on or about January 2, 1908, locations were made in San Benito County, California, in the names of the signers of the powers of attorney, 278 tracts embracing 5,560 acres (Plaintiff's Exhibit 4); 268 tracts embracing 5,360 acres (Plaintiff's Exhibit 5); 259 tracts embracing 5,180 acres (Plaintiff's Exhibit 6); and 281 tracts embracing 5,620 acres (Plaintiff's Exhibit 7); and that approximately the same area was, in 1904, 1905 and 1906, located in the names of the so-called Chicago locators (Plaintiff's Exhibits 8 and 9).

No, I spent no money on these locations made in 1904, 1905, 1906 and 1907, and filed no proofs of assessment work—never at any time filed proof of

(Testimony of L. B. McMurtry.)

labor on these Chicago locations in San Benito County. (Referring to Defendants' Exhibit "W.") Think that agreement and the proceedings recited in the resolution was made before I went east in 1911, and that the conveyance was afterward made. Yes, before I went east all the capital stock of the Pacific Oil Lands Company except three shares to the incorporator had been issued in my name. All of the rights retained by me in the contracts with McLeod and the Associated Oil Company, covering 1,440 acres of land embraced in the co-called New York locations (Plaintiff's Exhibit 32), together with 640 acres of patented land in San Benito County, were vested in the Pacific Oil Lands Company, and were the only lands conveyed to this company. Yes, prior to September 1, 1911, I had executed in the names of the New York locators a conveyance of the entire interest acquired under locations in their names in 1909 covering section 28 (Defendants' Exhibit "X").

"The COURT.—It won't do, Mr. Ach, to presume that I have any recollection of those details. Mr. ACH.—No, but your Honor will remember that when I state that it does appear in the record somewhere [709—603] that he felt that he was under obligation to Stratton— The COURT.—I remember that. Mr. ACH.—That he charged him with locating the land when he shouldn't have done it; that Stratton considered that he lost the land when he didn't do the assessment work, and that he was owing him for board and lodging for all these peo-

(Testimony of L. B. McMurtry.)

ple, and that he conveyed the interest which he acquired for all these locations in consideration of having boarded him and taken care of him while he was attempting to hold it for the New York and Chicago locators, isn't that true? Mr. HALL.—Yes, sir, quite true. We will take that as an admission. The COURT.—I recall very distinctly that it was evidence in some case that at one time McMurtry had, acting as attorney in fact for some locators, conveyed some property to Stratton in settlement of a board bill or some bill that Mr. Stratton claimed he had against McMurtry. Mr. HALL.—Yes, and which had been contracted while he was holding these lands for the Chicago locators. Mr. ACH.—That doesn't make any difference in this case. I am now at this point: I am trying now to show that which counsel would not admit, that before this transfer to the corporation, that McMurtry, acting for these people, whether he gave it away or gave it for value, or not, had disposed of these various locations which counsel said was outstanding at the time of the transfer to the Pacific Oil Lands Company, because, right or wrong, it is my understanding that when this transfer was made to the Pacific Oil Lands Company, that it conveyed all of the remaining interest—live interest of the New York locators to that corporation, both by contract to the Associated Oil Company and by contract with McLeod plus the 640 acres of San Benito County land. The COURT.—That is the inquiry I was making a moment ago. Mr. ACH.—

(Testimony of L. B. McMurtry.)

I understood it, and therefore I was trying to get counsel to admit it. I think we can prove it; I don't know. Mr. HALL.—I still [710—604] don't admit it, because I don't know. Mr. ACH.—All right." Yes, the deeds (Defendants' Exhibit "X") were intended as absolute deeds to section 28, and on September 1, 1911, when I conveyed other lands and interests in lands to the Pacific Oil Lands Company (Plaintiff's Exhibit 32), there were no interests in sections 4 or 7 or any other live locations upon which work had been done, remaining in these New York locators, in lands located in their names. I don't recall whether deeds to section 4 had then actually been issued but the land was under contract for sale with J. M. McLeod, calling for absolute deeds. Some time in 1909 there was a transfer of the northeast quarter of 7 by me, as attorney in fact, to C. L. Clafin, and by Clafin back to me. The object was to make applications for patent. Afterward I deeded it to E. A. Hoeppner, believing that it should be in the name of some outsider or some other person to make application for patent. It stands in that position to-day. I had no written agreement with Hoeppner. Yes, the land was developed. I located it, I think, May 9th, and had a discovery or a well that would produce over 20 barrels a day on the 17th of September, 1909. Yes, that was located in the names of the New York locators. No, it is not being operated. The oil was too light to use as fuel, we lifted the casing and the well caved in. I didn't want to go

(Testimony of L. B. McMurtry.)

ahead and sell the oil or attempt to, because I knew the Government would probably ask for a receiver, and I better let it alone. All that would be necessary would be to erect a derrick and clean it out, and it probably would be all right. No, this land was not conveyed to the Pacific Oil Lands Company. Yes, at the time of the transfer of certain lands to the Pacific Oil Lands Company (Plaintiff's Exhibit 32) there was on this 160 acres of section 7 a completed well producing 20 barrels or more of oil a day. Cannot recall when I conveyed this land to Hoepfner. It was prior to [711—605] August 4, 1910. Yes, application for patent has been made, and is still pending. Yes, section 9 was located in the names of these New York locators. I sold that early in 1909, to the Chanslor-Canfield Midway Oil Company, for \$10,000. Don't recall that the Columbus Midway Oil Company gave me a mortgage back for part of the purchase price when I made this conveyance (Plaintiff's Exhibit 44). The consideration was \$3,000 an acre, or \$120,000. I am satisfied that something over \$10,000 or less than \$25,000 cash was paid me, and no doubt some arrangement was made as to the balance, but I don't recall what the arrangement was. When the property was reconveyed to me (Plaintiff's Exhibit 45) any outstanding obligation was cancelled. I didn't include this 40 acres in the deed to the Pacific Oil Lands Company (Plaintiff's Exhibit 32) because I didn't expect to turn it over to that company until such time as it was a proven and pro-

(Testimony of L. B. McMurtry.)

ducing property, and as it never was, it was never transferred to them. No, I would not want to say it was not productive, because it may not be right. You might put a well down on one portion of the 40 acres and get oil, and put it down somewhere else and not get oil. I don't know whether on January 1, 1910, assessment work had been done on these Greenleaf lands (Plaintiff's Exhibits 17-24); nor did I ever do any assessment work on those lands McLeod was to get 75 per cent for developing (Plaintiff's Exhibit 25). I never saw any of those properties, and never had any report that McLeod did any assessment work there; nor did I know of any assessment work being done by anyone under or for the New York locators on either the McLeod, Greenleaf or Kinsey locations (Plaintiff's Exhibits 17-26). No, so far as I know, no work, assessment or development work, has been done upon those lands. I considered all of those locations dead at the time of this transfer to the Pacific Oil Lands Company (Plaintiff's Exhibit [712-606] 32). No, at the time I requested Searls, Thorn, Powell and Thickens to secure signers to the powers of attorney I didn't promise any of them a greater interest than they would acquire as a locator. The remark that I made to them, in my room, was to this effect: I asked them first if they could get these powers of attorney. They said they could. I told them that I wanted them for a specific purpose and if the land proved to be oil land that we would make some money out of it. That is all that was

(Testimony of L. B. McMurtry.)

ever said to them. Did not explain to them what I meant by the plural "we." That was all I said. The only difference between the terms of this contract made with McLeod between the 2d and 6th of January, which was destroyed, and the one made in May, 1909 (Plaintiff's Exhibit 33), was that under the January contract McLeod was to secure the patent, and under the May contract we would jointly have to pay for the patent. Yes, before making this January contract I told McLeod not to worry about it, to go on under the same terms and he would get a contract for and on behalf of the New York locators which would provide substantially the same thing. That was stated in Clafflin's office in Bakersfield. No, I am not the owner of any shares of stock in the Associated Oil Company, Union Oil Company, Standard Oil Company, California Midway Oil Company, Western Crude Oil Company, or the Thirty-Two Oil Company; nor have I ever owned any subsequent to August, 1910. No, I claim no interest of any character to the south 60 acres of the northwest quarter, or the north 100 acres of section 32; nor have I any interest of any character in any of the properties which were located by the New York locators now held, owned or claimed by the Standard, the Union, the United (successors of the Sunset Monarch), the California Midway, or Associated Oil Companies, nor have I any mortgage or lien of any kind from either of them against the northwest quarter of section 32.

[713—607]

(Testimony of L. B. McMurtry.)

“Q. I think I have asked you on this subject, but I find by the record a question asked you by Mr. Hall which reads as follows—at page 11: ‘While you were in New York at that time’—referring to the time that you asked the people to ratify—‘did you pay any of these people any money on account of their having executed the ratifications?’ ‘A. No, sir.’ Then a long objection by me, and the Court said: ‘If he paid \$250 he probably would know what he paid it for.’ ‘Mr. HALL.—That is what I say.’ ‘The COURT.—Answer the question.’ And then your answer is, ‘Yes, sir.’ Did you intend by that answer to convey to the Court the idea that you paid those men to whom you did pay \$250 in August, 1910, for the purpose of ratifying your transactions or those contracts? A. No, sir, I did not. If I made that statement it was a misunderstanding, because I did not pay them anything for signing those ratifications.”

Redirect Examination.

“Q. Why did you pay these New York locators this sum of \$250? A. For all their right, title and interest in and to all locations made under those powers of attorney issued in December, 1907.” Yes, this plan as outlined in this letter of July 7, 1910 (Defendants’ Exhibit “F”), was changed and the plan outlined in the contracts of August 4, 1910, substituted, providing for a declaration and ratification by the New York locators. Yes, this ratification by the New York locators was the only instrument or instruments executed by the locators under

(Testimony of L. B. McMurtry.)

the terms of that contract. No, there was no other instrument executed by me with reference to a declaration or ratification under the contract of August 4, 1910. No, I never saw this mortgage for \$20,000 which was given by Hoeppner to the Associated Oil Company, and know nothing of it of my own knowledge. [714—608] It is possible that I derived some money because of it. There may have been some money turned over during the time I was in New York. I don't remember the conditions or circumstances connected with it, and don't know what the security was. Daniel W. Darling died some time prior to my going to New York in August, 1910, though I didn't then know it. Yes, I went to New York subsequent to August 4, 1910. Fred B. Hughes was administrator of the estate of Darling in Kern County, California. Yes, I purchased the assets of Darling's estate that were there probated, for which I gave about \$250 or \$300. The estate there administered upon consisted of the locations made in his name in the Midway field. In addition to what I paid for this administrator's estate I paid Mrs. Darling \$250, just the same as we paid the other locators. Yes, we issued stock in the Pacific Oil Lands Company to Mrs. Darling. No, the arrangements I had with McLeod and Sue Greenleaf with regard to these locations (Plaintiff's Exhibits 17-25) were not in writing. The only writing between Miss Greenleaf or McLeod and myself in this regard were those deeds. No, at the time I made this conveyance to the Pacific Oil Lands Com-

(Testimony of L. B. McMurtry.)

pany (Plaintiff's Exhibit 32) I didn't know that assessment and development work had not been done on those lands. I never heard anything about those locations since the date of their location. E. W. Kay was superintendent of the Stratton Water Company. Yes, he was in a measure associated with me in business during all of those years. I don't know that he was one of the appraisers of the Darling estate in Kern County. Don't know who the appraisers were. E. A. Hoepfner was applicant for patent on the northeast quarter of section 7.

Q. What consideration did Mr. Claffin pay to you for the conveyance to him of the northeast of 7?

A. I think there was a nominal sum of \$10 that is usually used in those agreements.

Q. And from Hoepfner to you what was the consideration?

A. I think [715—609] the considerations were the usual considerations that are used in those agreements, Mr. Hall. I don't remember, however. But I suppose they were.

Q. Do you now personally claim an interest in that northeast of 7?

A. Yes, sir.

Q. What interest do you claim?

A. I claim an interest in it under those locations made on the 9th day of May, 1909.

Q. Well, what interest do you personally claim in it—what proportion of it?

* * * A. I claim the entire quarter-section. No, I did not pay any of this \$10,000 received from the Chanslor-Canfield company for the northeast of 9 to the locators. I conveyed section 4 to J. M. McLeod, for which I received \$40,000. No, I gave no part of this to the locators. Yes, I am now claiming

(Testimony of L. B. McMurtry.)

title to the northwest quarter of the northwest quarter of section 32, 31-23, part of the land in suit, under the so-called New York locations. Yes, it may be oil land. I have not a copy of the contract made with the Columbus Midway Oil Company for this 40-acre tract and don't know where it is. They paid me along in small payments, \$600, \$1,000 and various sums like that, totaling probably more than \$10,000. No, none of this was paid to the New York locators. The deferred payments under this contract with the Columbus Midway Oil Company were to be made to me as attorney in fact for the locators. Yes, in the case of Taylor v. McMurtry, in the Superior Court of California at San Francisco, wherein Taylor was seeking an accounting against me in connection with these New York locations, I testified that no promise was ever given Taylor to give him any interest in the locations; that there never was any intention of doing so; that Taylor never had any interest in these locations; that my recollection was that in securing these powers of attorney it was for the specific purpose of locating lands in San Benito Field, and that if the property proved to be oil land to repay—well, there were two or three of those [716—610] men who had secured powers of attorney that had advanced money for the Empire Oil Company—to repay them their money. It hadn't entered my head—let me make a further explanation—my understanding up to 1916, at the time this case was before the United States Court, that a dummy was

(Testimony of L. B. McMurtry.)

a man who did not exist, or in taking some man's name without his knowledge and using it, but it appears that the Special United States Attorney General passed a different construction on it, and claimed a man is a dummy who really hasn't an interest in the property. In discussing the matter with Mr. Ach he only asked me this one question—"Are you locators all alive?" I am simply trying to give you my understanding of a dummy. I desire to make an explanation to the Court. In this case of Taylor v. McMurtry before Judge Nourse of San Francisco, I am frank to admit that I lost my temper, and I believe that under the circumstances most any other man would. It will be necessary for me to go back just a little. In the trial of the case before your Honor in November, 1916, as I have stated once before, Oscar Lawler, for the defendants, apparently utilized all of his time and his power to build up a case for the locators. There never could be any question in anyone's mind even at that time. I was between—almost—the devil and the deep sea—the Government on one side trying to make my locators dummies, and Mr. Lawler on the other side building up a case for the locators to do me. It kept me—and, furthermore, I had not had any preparation in the case. These things went back from five to—yes, to thirteen years, if you will remember, which of course you do; that I had my dates mixed; I was a year off on many things, and no doubt I was "rattled," to use a common expression, and when this case came up of

(Testimony of L. B. McMurtry.)

Taylor vs. McMurtry and Mr. McCormick came into the case, as testimony has been given in one of the cases, Oscar Lawler recommended Mr. McCormick [717—611] to take this case against me. During this examination by Mr. McCormick and Mr. Mackenzie I absolutely lost control of myself. It is to be presumed when a man gets along to my age he is able to control his temper, but this happened to be one of the cases where there is so much at stake that I did lose my temper, and I made statements there that positively are untrue. In the first place, I never had any conversation with Mr. Wheeler regarding the ragged edge of the truth or the ragged edge of perjury at any time. How I happened to make the statement I haven't the least idea. When I made this statement in regard to Mr. Taylor not,—think it was probably a mistake on my part, or the reporter's—I didn't intend to say that Mr. Taylor had no interest. He didn't have any interest in the land, that was all. Now in regard to a dummy locator— Q. (By Mr. ACH.) What do you mean, Mr. McMurtry? Excuse my interruption. Do you mean that he didn't have an interest in the land at the time you were testifying or never had an interest? What do you mean there? A. I mean he had no interest in the land at the time I was testifying, which he did not. Mr. ACH.—Pardon the interruption.

A. (Continuing.) Regarding a dummy locator, I can assure you, your Honor, that there never was a time, neither was there ever an occasion for me

(Testimony of L. B. McMurtry.)

to use a dummy locator. It was something that had never occurred to me to use a dummy locator at any time, anywhere, or under any conditions. I never thought of such a thing. I never heard of such a thing until it was brought up about the time that we were getting—or preparing to get these ratifications. I had read some of these timber cases where men had been employed to go out and money had been paid to them to go and make certain locations, and I appreciated that that was a dummy locator. But where a man had not received any money for the use of his name, if he was a *bona* [718—612] *fide* citizen of the United States, I never realized that he was a dummy locator. That is a construction placed upon it by Mr. Hall and others in Washington connected with the Government. One of the officials of the Government criticised me for not giving the locators—"If you had given him more money, if you had paid the locators more, why, it would have looked different." Now, to my mind whether you paid the locator after the locations were made \$10 or \$10,000, really, I couldn't see any difference.

I began negotiating with Mr. Atwood, who was representing the Chanslor-Canfield Midway Oil Company for the transfer of the northeast quarter of 9, in the latter part of 1908. Yes, I was in the field during the fall of 1908 and spring of 1909. Yes, I am familiar with the location of the California Midway Oil Company's well No. 1 on the southwest corner of the northwest quarter of 32. Yes,

(Testimony of L. B. McMurtry.)

a portion of the material for a derrick was on the ground prior to January 1, 1909, on the northwest of 32. Yes, I know Dave Kinsey. He was superintendent of the California Midway Oil Company. The new location notice that I posted on the northwest of 32 was put on a stake 150 feet due northwest from the center of the section. Yes, this California Midway well No. 1 was on the southwest corner of the northwest quarter of the section. The old Chicago location notice was about 100 feet southwest of the northeast corner of the northwest quarter—that is where I thought I placed it but later found the lines were wrong and that this first notice was not on section 32 but on section 29 to the north. After I discovered the error in my first locations I just held possession without giving anyone any notice that there was any irregularity about it. This land which I actually held possession of was according to the new surveys the northwest of 32, and I afterwards covered it by this New York location made January 1, 1909. The California Midway were [719—613] in possession of the property under the terms of the agreement with the Chicago locators. After the California Midway took possession of the property, or after the agreements were made, while I visited the property, still at the same time I did not claim any possession of it. It was under their supervision, and it was their duty to look out for it and see that the land was not jumped and that it was properly developed and all that sort of thing. Yes, I suppose I claimed actual

(Testimony of L. B. McMurtry.)

possession under the California Midway under the Chicago locations up to January 1, 1909, and then under the New York locations. Q. Did you notice or were you in position to observe whether or not there were any changes in the actual physical work that was going on upon the northwest quarter of section 32 before and after January 1, 1909? A. Mr. Hall, in answering that question I will state that from the middle of November until the first day or the second day of January, I was one of the busiest men in the Midway field. There were jumpers out there—and it was a regular thing to eject a jumper every day, and sometimes two or three, and during that part of the time I don't know that I had a thorough knowledge of just what was going on on the northwest quarter of 32. It was from early morning until late at night. I couldn't state. Yes, I was on section 32 on January 1, 1909. No, I did not interfere with the work that was going on upon this California Midway tract of land after January 1, 1909.

Recross-examination.

When I went east in 1910 to secure these ratifications I left a power of attorney with A. E. Hoeppner, in San Francisco. Being shown the mortgage dated September 19, 1910, from the locators, by Hoeppner (Defendants' Exhibit "Y"), I have no recollection of ever having heard of it before. I have seen the contract signed by Hoeppner, as attorney in fact, but not the mortgage. I remember [720—614] there was some kind of a transaction under

(Testimony of L. B. McMurtry.)

which Hoeppner raised some money while I was in New York. No, prior to January 1, 1909, I had not told McLeod or anybody connected with the California Midway Company as to the defects in these locations. If I answered otherwise on direct examination it was certainly a misunderstanding, because I never did. Yes, I am positive that I had a written contract with McLeod concerning this land between the 2d and 6th of January, 1909, and if I said at any time that I had only a verbal contract with him at that time I was mistaken. This fact is shown in a diary kept by Major Hoeppner. Yes, this modification of the original drilling contract with McLeod was made about November 1, 1908, which modification was substantially the same as the contracts of January, 1909, and May, 1909. I think the only difference between the contract of January, 1909, and May, 1909, was something in regard to the patent. The contract of November 1, 1908, and that of January, 1909, were very similar, only the first was with the Chicago locators and the latter with the New York locators. Yes, all of the payments made by the Associated Oil Company on these lands were turned over to the Pacific Oil Lands Company, and I received no greater proportion than my stock holdings entitled me to.

Q. Did you not, at page 106, immediately following the quotation of Mr. Hall in answer to Mr. Mackenzie's question, say: "During the course of your activities under this power of attorney, did you consider yourself the agent of Mr. Taylor? A. I have

(Testimony of L. B. McMurtry.)

so testified. Q. You mean that you did consider yourself his agent? A. I have so testified, yes. Q. I am going to repeat that question Mr. McMurtry; I am not sure whether you have answered it or not. Now, is it a fact that you considered yourself as agent? A. I say that I so testified, but I was representing him. Q. It is a fact, is it the truth? A. In a measure, yes. Q. What do you mean by [721—615] that? A. He was a locator. Q. Were you his agent? A. I suppose under the law, yes.” Did you so testify? A. Yes. Mr. HALL.—Read the next question following that, Mr. Ach; it will shorten the examination. Mr. ACH.—I will do it for you: “Q. Did you consider yourself under the law his agent? A. I never considered that he had any interest in any way, shape or manner when I secured these powers of attorney. It was an afterthought all together.” Did you so testify? A. Yes, sir. Q. Well, did he have any interest in these located lands before you located them? A. No, sir. Q. The question of whether he had an interest in the lands came after the lands were located; is that a fact? A. Yes, sir.

Yes, the division of the land in the north half of 32 was the same under the contract with McLeod of January, 1909, as it was under the amended contract of November 1, 1908. Yes, I have a distinct recollection of making this contract with McLeod early in January, 1909, as to the New York locations. Yes, at the time I testified in A-38, involving the northeast quarter of 32, I had been advised that Mr. Law-

(Testimony of L. B. McMurtry.)

ler, representing the defendants in the case, and who cross-examined me, had been engaged in fomenting or attempting to cause litigation to be instituted against me by the New York locators for an accounting in this matter. That was in 1916. Yes, the Pacific Oil Lands Company had then been organized and the entire consideration had been received by me or that company from the Associated Oil Company. Yes, the 32,000 shares of stock of the Pacific Oil Lands Company had then been issued to the New York locators, 472,750 to A. E. Hoeppner, 50,000 to Harrison, and I held 50,000 shares. No, I did not then have any contract or agreement with Harrison or Hoeppner to share the expense of the litigation or judgment that might be entered against me in these accounting suits for the New York locators. No, there were no funds in the treasury [722—616] of the Pacific Oil Lands Company. Yes, all the money received from the Associated on these contracts was distributed by the Pacific Oil Lands Company as dividends as received. The last payment of \$800,000, in February, 1916, was partly in notes payable to the Pacific Oil Lands Company, which were discounted at once and the proceeds put into the treasury for distribution at once. I received only what my stock holdings entitled me to. Yes, there were twelve or fourteen suits brought by these locators against me, as I testified in the Taylor case, which was one of them. No, I never wrote any of these people or told anybody else to acquaint either one of them that I had located the land and that they did not and

(Testimony of L. B. McMurtry.)

were not to have any interest in them. Yes, at the time of the transfer to Claflin in 1909 (Plaintiff's Exhibit 30) a gas well had been brought in by the Standard Oil Company on section 26, and it had begun to look as though some of these lands were oil lands.

Q. Did you up to that time have any understanding or agreement of any kind with either of these locators that you were to receive any portion of that land or any amount of that land or any definite sum or proportion of the amount realized from those lands for services which you performed in locating the lands, or in causing the contracts to be made or the development to be made? A. No, sir. Q. Did you at that time have any security from them or either of them that they would, in the event of ascertaining the value of these lands, permit you, as their agent, to go on and manage and control the matter?

A. No, sir. Q. I will ask you again, did those facts and that condition have anything to do with the transfer by you, as the attorney of those locators, to Claflin, and back from Claflin to you? In other words, I want to know whether that had anything to do with this. A. Mr. Ach, it appears—or, rather, my recollection is that making that transfer was a suggestion of Judge Claflin regarding [723—617] the handling of the—or the convenience of handling those locations, and not signing all of those names; and, again, there were thirty-two small locators, some of these people were traveling men, there was the possibility of a death or something of that kind, and

(Testimony of L. B. McMurtry.)

it was really as a matter of protection. No, there was no agreement or understanding between Hoeppner, Harrison, Kay, Searls and myself at the time the agreement was made with the Associated as to how the proceeds from the contracts were to be divided. That had been talked about.

Redirect Examination.

We did not survey section 9. No, the relocation of it under the New York powers of attorney was not based upon the fact that there was a missurvey or mislocation of the lines of that section.

Q. I call your attention now to page 106 of the Taylor-McMurtry record, where I find the following, just following what Mr. Ach read. Did you consider afterwards that he had an interest which you were representing as his agent? A. Yes, after the United States withdrew the land. Q. What was

there in that that made you change your attitude of mind towards Mr. Taylor? A. Because it was necessary then that those men should be *bona fide* locators, and have an interest, in order to meet the contest with the Government, that we would have to—

Q. Is it the truth that they were *bona fide* locators at the time you made the location; as you understood it, was Mr. Taylor a *bona fide* locator? A. That depends on what is considered a *bona fide* locator.

Q. What did you consider it at the time? A. I considered that he was, because he was a live man. Q. Did you consider that in making the locations you were acting as his agent, in his interest? A. I had never thought of it at all as a matter of agency. Q.

(Testimony of L. B. McMurtry.)

Is it a fact that the reason you gave him a check for \$250 and testified that that was more than he was entitled to, was due to the [724—618] fact, as you say, the truth is, that he was a dummy? A. Yes, sir." Did you so testify? A. I did so testify,—which I have explained to the Court, I believe.

Recross-examination.

No, I did not consider Taylor a dummy when I gave him the check for \$250, and didn't tell him I did. Yes, I told him when I met him August 24, 1910, the entire transaction—all the arrangements with the Associated Oil Company regarding our contract, how it was, the price that was to be paid and how it was to be paid, provided, however, there was oil discovered. Q. And this testimony that Mr. Hall just read in the record was at the same time—practically the same day as the other testimony that you have admitted making at the time these suits were pending? A. Yes, sir.

Redirect Examination.

No, Taylor expressed no dissatisfaction with the manner in which the affairs had been handled when I made this explanation to him.

Mr. ACH.—Mr. Hall, the amount of oil that the Associated Oil Company from one well on the 60 acres has extracted from that property I will prove in this case. The amount of oil which the California Midway Oil Company has taken from that quarter-section, and is now taking, I will prove in this case. It goes without saying, when the testimony is all in,

(Testimony of L. B. McMurtry.)

there has been no oil from the northwest 40 acres in the northwest corner of that property. The gravity of that oil, I presume, for the purposes of this trial, does not cut any figure, but the gravity of that oil you can have at any time.

Mr. HALL.—Now, with that understanding, that that question is open in the event that your Honor should ultimately decide that the Government has a right to recover upon those matters, the Government [725—619] desires to rest its case in chief.

Mr. BRANN.—Mr. Hall, do I understand that you intend to offer proof, as far as the defendant McMurtry is concerned, on that 40 acres, that oil was taken off or that there has been wastage by letting water into the well, or things of that kind?

Mr. HALL.—Oh, no, not as to that; I haven't any testimony at this time.

Mr. ACH.—Do I understand that the case was closed as to McMurtry? And it goes without possible contradiction that there has been no oil taken from there. There is no well and no intent to drill any well upon the land. That is simply evidence at this time. Now, you say you have no more evidence on that subject, did I understand you?

Mr. BRANN.—If that is so, your Honor, I think I am now in position to renew my motion which I made at the opening of the trial, in the admission of Mr. Hall, that as far as McMurtry is concerned, we are entitled to a jury trial here.

The COURT.—Jury trial for what?

Mr. BRANN.—On the issue as to whether or not

the locators, as far as McMurtry, and the *bona fides* of these locators.

The COURT.—Well, hasn't the evidence disclosed that this is a piece of wild land, and no one is in possession if it?

Mr. BRANN.—There is no evidence here to show that McMurtry is not in possession of it. He has presented a deed here. That carries with it the possession.

The COURT.—But the legal title of that is in the Government, and no one, it seems, is actually occupying the property, so there might be a very serious question as to whether the Government could bring an action in ejectment in cases of that kind, or not.

Mr. ACH.—It is a very serious question as to whether the Government [726—620] can bring any action of any kind in regard to it.

The COURT.—Yes, I think that is probably true.

Mr. ACH.—I know if I was counsel for the Government I would dismiss him.

Mr. BRANN.—Then we will ask your Honor, in order that we may have the record clear, that you will deny our motion at this time for a jury trial, and we will take our exception.

The COURT.—Yes, sir, *pro forma*.

Mr. BRANN.—As far as Mr. McMurtry is concerned.

The COURT.—Yes, sir.

Mr. BRANN.—Now, then, your Honor, I make the motion that we be dismissed from the action.

The COURT.—That will be the same ruling.

Mr. BRANN.—Exception.

Mr. PEASE.—And the situation, if the Court please, with regard to Mr. McLeod is very apparent at this time. He has parted with whatever interest he had in the land. He is not committing any waste, never has, never has extracted anything from the ground, and I confess that in my young years I do not understand why he is in this case, especially any longer, after the testimony that has gone in.

The COURT.—I don't know what the Government claims.

Mr. HALL.—The answer admits that he claims an interest in this land, and I think I shall argue to your Honor, when the final argument comes up, that Mr. McLeod is burdened with the duty as to carrying out this question of securing title under those contracts and those locations.

Mr. ACH.—But that does not concern the Government in any way. If he is under obligation to somebody else, that is none of the Government's business.

The COURT.—Well, I will reserve the entire question and hear [727—621] it at the final argument.

Mr. ACH.—Now, do I understand that counsel has rested the case?

Mr. HALL.—With the exception of any proof, as stated.

Mr. PEASE.—Then may it be deemed that I made the formal motion, and that motion has been dismissed as to Mr. McLeod?

The COURT.—Yes.

(Testimony of C. L. Claflin.)

Mr. PEASE.—And we take an exception.

The COURT.—Yes, you may have your exception.
[728—622]

Testimony of C. L. Claflin, for Defendants.

C. L. CLAFLIN, called by defendants, March 6, 1919, testified in open court as follows:

Have practiced law at Bakersfield for the past 18 years, and was Judge of the Superior Court of Modoc County, California, for six years. As to these deeds (Plaintiff's Exhibit 30, 31) I think I suggested to Mr. McMurtry that a plan of that kind should be followed for convenience in handling these lands and to avoid the difficulties which might result from the death or incapacity of any of the locators. That was the idea that I had. And Mr. McMurtry agreed with me, in fact, took my advice in reference to it. No, there was no statement or declaration made by McMurtry to the effect that his object and purpose in making these transfers was to deprive the locators of their interests in those lands or contracts relating thereto, or that the locators did not have, or that he intended they should not have any interests in those contracts or those lands. The title was handled that way for convenience, but always for the benefit of the locators. Yes, I was present at this interview between McMurtry and J. M. McLeod in my office in January, 1909, as testified by McMurtry. I recollect that some time after the first of January—I don't recall the exact date, but it must have been soon after the

(Testimony of C. L. Claflin.)

first of January—Mr. McMurtry and Mr. McLeod came to my office. Mr. McLeod—it was then—the first time—as I now recall that was the first time—it must have been the first time when I had any knowledge of the new locations. McLeod talked to McMurtry in my presence and asked him what was going to become of him, and the matter was discussed at length and McLeod seemed to feel that McMurtry probably was trying to take some advantage of him—and seemed to be just a little bit angry about the matter, and finally it was agreed that a new contract should be entered into between the New York locators and McLeod, or Mrs. McLeod, as the case may [729—623] have been, as a substitute for the previous agreement made by the Chicago locators. That, in substance, is my recollection of the interview, and the understanding entered into there was carried out by the execution of another agreement. During the time I have practiced at Bakersfield I have done considerable work relative to unpatented oil lands and am well acquainted in Kern County, of which Bakersfield is the county seat. Never heard of any organization of miners which established rules. Have been personally interested in oil locations in Kern County.

The general custom and practice was that a location notice would be posted on the land. If it were surveyed land, nothing further would be done upon the land usually, although in the earlier days, in 1900 and 1901, and even later perhaps, they marked the boundaries, even on surveyed land, by stakes, and

(Testimony of C. L. Claflin.)

after the location notice was posted a duplicate or copy would be recorded in the office of the County Recorder of the County. For instance, if that location should be made on the first day of January, 1901, then in the year 1902 \$100 worth of work of some character would be done on the land by the locators. That would be followed along perhaps for a number of years and eventually a well would be drilled and oil discovered and a patent issued on application. That was the general plan, and frequently such locators made contracts for the development of such lands. The locators would enter into an agreement with someone who had capital for the drilling of a well, with an agreement that when patent was issued the locators should have a portion of the land and the party drilling the well should have a portion. Considerable of the development of oil land in Kern County was accomplished in that way. Limitation as to the number of claims the locators might make was not regarded as necessary or considered in any way so far as I know. It was always regarded as [730—624] proper and legitimate for a set of locators to locate a large area. Have heard the question discussed but never heard it claimed that it could not be done or that it was not proper to do so. And the rights of the locators who made locations, recorded the proof of labor and maintained it in that way for two or three years, were always regarded as being of value, and sales of such rights were very frequently made. Have frequently acted as attorney and advisor for purchasers

(Testimony of C. L. Claflin.)

of such rights before discovery and have sold a number of such interests of my own.

Cross-examination.

During the period between the execution of these contracts of October 8, 1908, and May 17, 1909, I guess I represented McLeod. I so understood it. Of course it was a sort of mutual affair—as between McLeod, and McMurtry, but my employment in those matters was by McLeod. Yes, in November and December, 1908, I represented McLeod, Wheat, and Wilson, and Gordon in these transactions affecting Section 32. Don't know just when I discovered the defects in the so-called Chicago powers of attorney, but think it was when McMurtry was in my office about January 1, 1909. Yes, I wrote that letter of November 12, 1908 (Plaintiff's Exhibit 65), and suppose I received that one from Wilson & Wheat of November 14, 1908. (Plaintiff's Exhibit 66). Don't recall anything about the defects in those powers of attorney, and don't how I learned of it unless it be that McMurtry called my attention to something in relation to the matter. I have a faint recollection that he did, in view of that letter. [731—625]

Testimony of Douglas S. Watson, for Defendants.

DOUGLAS S. WATSON, called by defendants, testified March 5, 1909, in open court as follows:

(Defendants' Exhibit "A-1" shown witness.)
Yes, that is the original deed, dated March 22, 1911, from the locators to the Columbus Midway Oil Com-

(Testimony of Douglas S. Watson.)

pany, embracing 40 acres in the northwest corner of the land in suit. The actual work of drilling a well on this 40 acres was begun in March, 1911, at which time the California Midway Oil Company had a producing well on this same mining location embracing the northwest quarter of 32, 31-23. We drilled one hole 1010 feet and lost the pipe, then drilled another hole and completed a well. The total cost to me and my associates was about \$77,000 or \$78,000. Before starting the development of this 40 acres we paid McMurtry \$10,000 as the first payment. Yes, I was instrumental in bringing the Associated Oil Company and L. B. McMurtry together.

In the latter part of April, 1910, Mr. Garrett, my partner, and I returned from Bakersfield. We had drilled an unsuccessful well on section 22 in the east portion of the Kern field, and owned two complete strings of tools. We were looking for a piece of land upon which to operate. Ralph Arnold, the geologist, whom I knew, happened to be in Bakersfield just before we left, and I asked him if he knew of any piece that we could get hold of, and he suggested that we look into the Viacitis District. With that idea in view Garrett went down through San Benito County and over to the Viacitis District to look over the land and see if there was any land there that could be had. As I recall, a man by the name of Ashurst had a great deal of land adjacent to some wells that the Union Oil Company had drilled, but he asked us for so much money for the right to drill upon the land, that Garrett came back

(Testimony of Douglas S. Watson.)

more or less in disgust. On his return trip, which was made in a machine, he stopped in Hollister and asked George McConnell, the then assessor of San [732—626] Benito County, if he knew of any people who owned land in the Viacitis District that Garrett and I could get hold of. McConnell said, "Why, I have a friend who drills land in the Midway field. What is the use of going to Viacitis." He says, "I will give you a letter to him." Which he did. That man was L. B. McMurtry. Some time in the end of April, or the latter part of April, 1910, Mr. McMurtry came to our office, which was then in the Humboldt Bank Building. Garrett had not presented his letter, but George McConnell had written to him stating that we were looking for land. McMurtry produced a map of the North Midway field and said, "Here are the lands that we are interested in, and we would like to talk to you about it." At that time the 200 acres in the north of 32, 31-23, was under option to somebody down here in Los Angeles. I believe it was Wilson, I don't know. Garrett and I had an idea that we might sell that land for McMurtry; and we obtained a five days' option upon that 200 acres lying along the north of section 32. We advertised the land in the papers, both here and in San Francisco. Garrett made several trips to see prospective purchasers, but all of the attempts fell to naught. We then said to McMurtry, "We think we can get you some money out of the land provided you will do this: Cut it up into smaller holdings, and permit us to form a com-

(Testimony of Douglas S. Watson.)

pany upon 40 acres; and when we have successfully done one, on one forty, then we will progress to the next." So that we began in the extreme north and west part of this 200 acre band across the top of the section. And we formed the Columbus Midway Oil Company. Garrett and I took a contract to purchase the land and turn it over to the Columbus Midway. The Columbus Midway, I believe, was incorporated in June of 1910. We sold some stock—put some money in of our own, and found that we had a little difficulty in selling as much stock as we thought we should. I said to Garrett one day, "I will go down [733—627] and see Scribner"—whom I knew quite well—"and if we can make a contract with Mr. Scribner to sell to the Associated Oil Company a contingent and future oil to be produced from this property, why then our troubles should be over." So I approached Scribner with that idea in view, to sell him a contingent 100,000 barrels of oil. At that time we had not begun drilling. Mr. Scribner scoffed at the idea. Oil was very plentiful. The Lake View was then doing its quota, the Lake View Gusher. From that conversation we drifted to the general condition in the West Side. He said that the Associated might be interested—

Q. Let me ask you something; you said, as I understood you, before you go on with your statement, that you acquired your original interest in this 40 acres in March, and then you mentioned the month of April.

A. I think you misunderstood me, Mr. Ach. I

(Testimony of Douglas S. Watson.)

said that we began operations upon the property—actual drilling operations, in March of 1911. It was in April, 1910, when we first met Mr. McMurtry. Mr. Scribner said that the Associated Oil Company might be interested in the lands in the North Midway field. I don't remember whether we got a map out and looked upon it or not, but there was—immediately I said, "Well, if that is the case, I would like to present you something." And I went on back to the office and talked it over with Garrett; called in Mr. McMurtry and asked him if we might present to the Associated Oil Company the lands that ultimately were contracted for on August 4, 1910. Thereupon Mr. McMurtry was agreeable, and I put into writing a tentative proposition; went down and delivered it to Mr. Scribner, talked the matter over, and finally got to a basis where we thought we could do business.

Q. Let me interrupt you, please. Prior to the time of going down to Mr. Scribner, after talking with Mr. McMurtry, did you obtain any [734—628] contract with Mr. McMurtry for compensation or commissions or anything of that kind, in the event that you succeeded in doing anything with Mr. Scribner or the Associated Oil Company?

A. No, sir. Mr. McMurtry specifically stated that we would have to get our compensation out of the Associated Oil Company. Q. Prior to going down with the tentative proposition that you have mentioned, did you discuss that tentative proposition with Mr. McMurtry? Did it emanate from you or

(Testimony of Douglas S. Watson.)

him? A. It emanated—a price upon the lands was set by Mr. McMurtry, but the method of handling—of presenting the matter, fell to us, or rather largely to me. Q. Go on.

A. The first plan, as I recall, was that a corporation would be formed; that these lands would be conveyed to that corporation, and that a series of bonds would be issued upon each of the several parcels of land; that a sinking fund would be established at the rate of so much per barrel for oil produced on the several pieces of land, and that the Associated would bind itself to do the drilling and operate so many strings of tools. The land in 32 was regarded by Mr. Scribner as proven land. The outlying lands—the lands in 20, in 26 and in 34 were not so regarded, so that a larger price per acre was put upon the 160 acres along the northern line of 32, which, as I recall, was \$2,500 an acre, while the outlying lands were figured at \$1,500 an acre. Afterwards, this method of handling the properties was abandoned—

Q. Wait a minute. Let me interrupt you. I refer to Exhibit “E” in evidence in this case, being a letter dated June 22, 1910, to Mr. Scribner, signed Douglas Watson; is that your signature? A. Yes, sir. Q. And you are the gentleman that wrote that letter? A. I believe I am. Q. Now, before sending that letter to Mr. Scribner, did you show it to Mr. McMurtry and obtain his approval of it? A. Yes, sir. Q. I call your attention to this portion of the letter— [735—629] to Othello Scribner: “I sub-

(Testimony of Douglas S. Watson.)

mit the plan herewith modified to meet your suggestions. First: We to form corporation, capital \$2,500,000. Second: Issue \$2,500,000, 6 per cent 20 years bonds. Third: Sell to such company 160 acres proven territory in 32, 31-23 for \$400,000 in bonds. Payable \$100,000 upon transfer of title, \$100,000 upon completion of well within one year, balance \$200,000 upon issuance of patent." Referring to the statement there that the section 32, 31-23, 160 acres, was proven territory, if I understand your testimony, prior to that date, about April or some time before this date, your company had been organized, you had been trying to sell stock, failed, and you went to Mr. Scribner in order to attempt to make a contract for oil. That is a fact, is it? A. Before the date of that letter, yes. It was in June, however. Q. Well, whenever it was, it was before that letter? A. It was before that letter, yes, sir. Q. Now, had you yourself been down upon that property prior to that day? A. Yes, sir. Q. And did you make any representations or statements to Mr. Scribner as to an existing well upon the property in section 32 at that time? A. You mean the northwest quarter? Q. Yes, sir. It speaks of 160 acres here of proven territory. A. I don't know as I made representations. It was my knowledge that the California Midway had a well upon the property by that time.

That letter dated July 1, 1910 (Defendants' Exhibit "F") was received by me from Mr. Scribner. I turned it over to McMurtry. Also received this

(Testimony of Douglas S. Watson.)

letter of July 21, 1910 (Defendants' Exhibit "C").

Q. What, if any, conversation did you have with Mr. McMurtry about the statement as to drilling operations in section 32, and what conversation did you have with him, if any, after the receipt of this letter of July 1, 1910, concerning the declaration of trust which Mr. Scribner there demanded by the persons who held the legal [736—630] title, to the effect that it was held for the locators? A. Regarding the drilling. I believe we discussed the date of the coming in of the California Midway well. Regarding the declaration of trust, Mr. McMurtry told me that I might tell Mr. Scribner that that was acceptable—that he would make a declaration of trust. Q. Did Mr. McMurtry at that time claim to you that any other person than the locators were the owners of that land or entitled to the title to it? A. I don't recall that there was anything said regarding any other ownership or interest in the land outside of the locators and McMurtry. Q. (By Mr. ACH.) Did Mr. McMurtry at that time tell you that he had any interest in that land as against the locators? The COURT.—He may state what was said by McMurtry on that subject. A. I don't believe there was a lot of conversation in that regard, Mr. Ach. I think when this was gone through with, *seriatim*, that Mr. McMurtry waved his hand and said, "Of course, we will do that."

Received this letter of July 7 (Defendants' Exhibit "F") and took it up the next day with Mc-

(Testimony of Douglas S. Watson.)

Murtry. I wrote that letter dated July 9, 1910 (Defendants' Exhibit "H"). Was authorized by McMurtry to do so, the conditions therein being carefully considered. Also wrote this letter of July 26, 1910 (Defendants' Exhibit "I"). Of the original plan proposed, which contemplated the formation of a corporation and the issuance of a series of bonds on each one of the parcels, was deemed to be too cumbersome. Just who suggested the modification, I don't recall, but I am under the impression that it originated in the Associated Oil Company. The new arrangement was finally crystallized into the form in which the transaction finally was carried through on August 4, 1910, a deed to be given by each one of the locators to one of the persons we have always called the Herrin grantees, and a contract in the form that now exists, to be entered into. [737—631]

As soon as we got down to the point of a deal with the Associated Oil Company, Mr. Scribner's first question, I believe, was, "What about these locators?" He wanted to know about these locators. I talked with Mr. McMurtry—had talked with him about that, and assured Mr. Scribner that all of the thirty-two persons were alive and that the power of attorney under which Mr. McMurtry had acted was unrevoked. The 160 acres in the north half of section 32 was deemed by all of us to be proven land; and therefore a portion of the purchase price of

(Testimony of Douglas S. Watson.)

that parcel was to be paid for in money. No money was to pass until the Associated was assured that the various locators were alive, and that money was to be placed in escrow, pending the assurance on the part of ourselves, for Mr. McMurtry that all of these locators were alive. Q. You say in this letter that "the suggestion is made that the confirmation of twenty-five of the thirty-two locators should make it possible for the money to be withdrawn. It will be possible to reach all of the thirty-two locators, but the obtaining of three or four may require four or five months." What do you mean by "confirmation"? What was asked of you by Mr. Scribner or by anybody else in the shape of a confirmation? A. The idea of a declaration of trust had been abandoned with the old and original method of dealing with the lands. When it came to the new plan, the confirmation confirming the acts of McMurtry under the power of attorney was to be obtained and sworn to by each one of the locators. Q. (By Mr. ACH.) Was anything said about the necessity by Mr. Scribner or demand on his part upon the subject of ratifying the contracts which were proposed to be entered into by these locators? A. As I recall, Mr. Ach, not only were the acts of McMurtry included, but the ratification of this form of contract with the Associated. I then knew none of these locators. Learned from McMurtry that Daniel W. Darling was at San

(Testimony of Douglas S. Watson.)

Andreas, Honduras. It was [738—632] McMurtry who suggested that the confirmation of the 25 locators should be sufficient to draw the money down. Believe I delivered this letter (Defendants' Exhibit "E") to Mr. Scribner in person and that immediately we got Mr. Brann and yourself together to draw the contracts. Yes, it is possible that preparation of the contracts may have been started before that. Yes, Mr. Scribner insisted on a ratification by the 32 locators, and this was considered a condition precedent to any deal, and that the papers should be deposited in escrow pending the securing of same. If the entire 32 ratifications were not obtained, the deal was to be off. Yes, these transfers, McMurtry to Claflin and Claflin back to McMurtry, in December, 1909 (Plaintiff's Exhibits 30, 31), of which I first learned when the abstract was secured during negotiations with the Associated, were discussed by representatives of the Associated. I believe McMurtry explained the object was twofold: one, to eliminate the signing of so many names; and the other, to a certain extent to protect himself in the event of death of any of the parties. That is the feeling that I have covering that Claflin transfer. Q. Did Mr. McMurtry, at the time this matter was taken up, or spoken about, between you, say to you that these locators did not have any interest in the land or anything to that effect? A. The question of the locators being alive and being real people, and so on, was a very burn-

(Testimony of Douglas S. Watson.)

ing one—one that Mr. Scribner insisted upon at some length. I had never had any experience with located land but just once before, when I located some land for members of my own family; so that it was quite natural that we did a good deal of talking with Mr. McMurtry at that time as to who these people were and all about them, and the method that he had used in procuring these powers of attorney, and all that. It was the first time that I had ever heard of locating by power of attorney. I thought it was a very cute [739—633] trick, and very new; so there were numbers of times when we talked about the locators, and each time Mr. McMurtry added something to our knowledge. I don't know that I can just say what was said in our conversation, but we were always assured, what carried the assurance to Mr. Scribner, that they were persons that were alive and in fact that the locators were all right.

Q. (By Mr. ACH.) Now, I want to know this: Whether, Mr. Watson, at the time you made your first arrangement with Garrett concerning the obtaining of the option or concerning the occupancy of a portion of the north part of section 32, or whether when you got your deed in 1911 signed by the locators, or when you were carrying on these negotiations between the Associated and Mr. McMurtry, and while the Associated was demanding a declaration of trust for the locators, or a ratification of the power and the acts thereunder, including

(Testimony of Douglas S. Watson.)

the contracts about to be made, Mr. McMurtry at any time stated to you that the locators did not have any interest in that property and that it belonged to him alone; or to himself and Hoepfner; or to himself, Hoepfner and Harrison? I want to know whether he ever made any such claim. A. Mr. McMurtry never, to my knowledge, made the claim that the property belonged absolutely and personally to him. I don't think that I would have risked my money on the 40 acres— Mr. HALL.— Well, I object to that. Q. (By Mr. ACH.) Well, I understand you to say that he never did. A. Never did.

No, these demands of the Associated in the first instance for the declaration of trust by whoever seemed to hold the legal title did not meet with any opposition in June or July, 1910, from McMurtry. Yes, while McMurtry was in the East on this matter I was in San Francisco the greater part of the time and assisted in the negotiations. The circumstances connected with this letter of September 19, 1910 (Defendants' Exhibit "Y"), were as follows: I was advised, [740—634] as these ratifications were made, when Garrett went east with McMurtry, and he wrote me now again, and when we had gotten 24 or 25 of the—I had advised Mr. Scribner, rather, that 24 or 25 of the ratifications had been obtained, why, I was asked to see if I could not get the Associated Oil Company to advance some money; and I went to Mr. Scribner with that idea in view. The

(Testimony of Douglas S. Watson.)

basis of our negotiations was the fact that at that time there had been secured 28 ratifications, and Mr. Scribner thought that he would be perfectly safe in assuming that the other ratifications would be obtained, and advised the company that they could safely advance some money. And I remember getting hold of Mr. Hoepfner, representing Mr. McMurtry, and taking him on down and introducing him to Mr. Scribner. Hoepfner held a power of attorney executed by McMurtry, authorizing him to act for the New York locators, and executed a mortgage in their names to secure the Associated for the money advanced. Yes, I had a commission contract, and my commission was paid. No, the Associated is not indebted to me or I to it, nor am I a stockholder in that company. Yes, what interest I had in the northwest of 32, so far as the 40 acres is concerned, was merged in the Columbus Midway Oil Company, and by this deed to Mr. McMurtry (Plaintiff's Exhibit 45). I intended to part with all the interest of the Columbus Midway or myself in that 40 acres. Yes, Mr. Garrett was interested with me in that commission. Yes, he went back with McMurtry to advise me as to the result of the effort to secure these ratifications; and I think there was a further reason, and that was to see that those locators were alive and were real persons. No, there was never returned to us this \$10,000 we paid McMurtry or any of the money we expended on that land. We had an arrangement

(Testimony of Douglas S. Watson.)

with him that if we formed a company and successfully financed it Garrett and I were to make a commission, which we did. [741—635] Under our contract with McMurtry we were to get this 40 acres at \$2,500 an acre. We turned it in to the Columbus Midway at \$3,000 an acre and received \$5,000 in cash out of the first payment and notes for \$15,000, which latter were torn up when the land was reconveyed by the company to McMurtry.

Cross-examination.

Yes, this 40 acres was conveyed directly from McMurtry as attorney in fact, to the Columbus Midway, under the contract to purchase that Garrett and I had secured in about May, 1910, at which time the only improvements on the land was a cabin. Yes, we were relying on the New York locations of January 1, 1909, and on the discovery made on the northwest quarter in the California Midway well No. 1. During all this time the land was held by Garrett and myself under our contract and by the Columbus Midway such reliance was entertained by both Garrett and myself and by the Columbus Midway. That company began drilling on this land in March, 1911. The second hole was completed into the oil at 3,000 feet. We sold some oil, but the well did only 60 barrels a day and didn't pay us. We preferred to reconvey to McMurtry rather than pay the unpaid portion of the purchase price. We plugged the well and got rid of all the stuff on the

(Testimony of Douglas S. Watson.)

land just before or just after the reconveyance to McMurtry (Plaintiff's Exhibit 45). As to this deal with the Associated, when we started, as I have testified here, we were told that we would have to look to the Associated Oil Company for our commission. That was carried through and we were given a commission, depending on the production, totalling \$170,000. After the transaction was entirely completed and everything signed up and McMurtry about to go east with Garrett, he took Garrett aside and said, "I am so pleased with the way you have handled this thing that I am going to give you a 10 per cent interest in what may come out of this proposition." [742—636] Now that was to Garrett. When Garrett went east with McMurtry in August he was not representing the Associated. He was representing McMurtry, if anything. He never represented the Associated, nor did I. [743—637]

Testimony of Othello Scribner, for Defendants.

OTHELLO SCRIBNER, called by defendants February 21, 1919, testified in open court as follows:

Reside in San Francisco. Was receiver of the United States Land Office at Visalia, California, about two years, 1899 to 1901, and prior to that had been interested in oil locations in the Coalinga district from 1896. Have been in touch with the oil industry in the State up to 1911; was connected with the Inca and Arica Oil Companies, of Coalinga.

(Testimony of Othello Scribner.)

Was one of the original organizers of the Associated Oil Company in 1901. Was Secretary until 1911, and from about 1903 was Assistant General Manager. Was also a director and kept in touch with its affairs. W. A. Williams, whose name appears at the bottom of these sheets dated April 25, 1910 (Defendants' Exhibit "B"), was in the geological department of this company at that time and made this report at my request. I was naturally following the development in that district, and there was a great deal of excitement there, and the big wells being brought in, and I noticed on the map that this ownership was delineated, and it was a large ownership, and I asked Mr. Williams to examine the status of those lands and make a report to me, which he did, and that is the report. Later Douglas Watson, claiming to be the agent of Mr. McMurtry and representing Mr. McMurtry,—and I think he stated also Mr. Hoepfner,—brought up the proposition of the Associated Oil Company acquiring those lands, and stated that they could be purchased upon, generally speaking, a production basis, which interested me very considerably at that time, with some cash. That occurred in my office—I don't know, in the month of June, 1910. Afterwards, after we had gone into the matter very considerably, Mr. Hoepfner—or Mr. McMurtry, was there, Mr. Garrett was there, and I had conversations with all of them. They stated to me that those locations were made in good faith; that they

(Testimony of Othello Scribner.)

were made— Before I saw Mr. McMurtry, I [744—638] went into the details with Douglas Watson. Mr. Watson stated to me at the time that the location—well, all of the others—that there was a discovery on the northwest quarter of section 32; that there was a rig up, you understand, on the northeast quarter of section 32; the work had been commenced prior to the withdrawal order of 1909, and that it was prosecuted with diligence; and that all of these locations not connected with this case at all—the Union Oil Company and Standard Oil Company, had contracts with McMurtry and his locators, and they were in possession of each and every one of the other locations and drilling upon them and prosecuting the work from some time prior to the withdrawal order, and had been ever since. And the subject of the good faith of the locators was discussed and both Mr. Watson and Mr. McMurtry represented to me that those locations were made by citizens of the United States; that they were all alive. Mr. McMurtry presented powers of attorney under which he had made these locations, and these powers of attorney were generally examined. And the question of the good faith of the locators finally resulted in our insisting upon a ratification by each and every one of the locators, to be acknowledged before a notary public, ratifying the transaction and the contract that was finally made between the Associated Oil Company and Mr. McMurtry, an attorney in fact, representing these various locators. After considerable

(Testimony of Othello Scribner.)

negotiations the terms were agreed upon (Defendants' Exhibit "F"), and this contract of August 4, 1910 (Defendants' Exhibit "K"), entered into. For our protection we demanded that the transaction we had agreed upon through Douglas Watson and McMurtry should be ratified before a notary public by each of the locators before the deal should be consummated, the papers being put in escrow. The ratification of locator Darling was not obtained; he was dead. This was taken care of as shown in that contract of June 22, 1911 (Defendants' Exhibit [745—639] "L"), signed by McMurtry. When the question of these ratifications came up, McMurtry seemed to be pretty shy of money, and wanted five thousand dollars to pay his expenses in securing the ratifications. We advanced it to him with the understanding that if he did not get the ratifications he would repay the five thousand dollars, and it was to be a lien on any interest he might have. This amount became a part payment on account of the purchase price. During these negotiations or at any time while I was with the Associated Oil Company no statement or representation was received by me as an officer of that company in any way to the effect that either or any of the locators were not *bona fide* locators. Never heard the subject mentioned, and I handled the entire transaction with the aid of the attorneys.

Cross-examination.

Am not now interested in any way in the Associated Oil Company. In advancing this sum

(Testimony of Othello Scribner.)

to McMurtry to get the ratifications we had his promise that it was a loan to him as well as a payment on the contract. The interest that McMurtry had in this land was our security, as set out in paragraph 20 of this contract, reading: "It is further understood and agreed that the Five Thousand (\$5,000) Dollars advanced by the Associated Oil Company to said L. B. McMurtry is to be a lien upon all the interests of said L. B. McMurtry in and to said land." [746—640]

Testimony of Walter S. Brann, for Defendants.

WALTER S. BRANN, called by defendants March 5, 1919, testified in open court as follows:

Am a practising attorney and member of the firm of Jordan, Rowe & Brann, of San Francisco. Have been present during this trial and heard the testimony of Mr. Watson and Mr. McMurtry. During the negotiations mentioned I represented those negotiating with the Associated Oil Company and prepared the papers (Defendants' Exhibits "F-1" to "N-1") provided for in this agreement of August 4, 1910 (Defendants' Exhibit "K"), and various other deeds and documents in connection with the transaction. During this negotiation Mr. Ach, representing the Associated Oil Company, not only insisted on our furnishing conveyances or releases from all shown by the abstract to have any possible interest in the land in question, but the personal ratifications of anything therefore done by McMurtry and the agreement then under consideration by each locator, to which McMurtry

(Testimony of Walter S. Brann.)

offered no objection. There was no discussion of these locators being "dummies." What was wanted was to know if these powers of attorney had been properly given—if these men were alive—if McMurtry was acting for them and with their authority, and if the transaction was all through done in the interests of the locators. That was the basis of my discussion with Mr. Ach; and he said that was why he wanted these ratifications. [747—641]

Deposition of George Grant Gillette, for Defendants.

GEORGE GRANT GILLETTE, called by defendants February 8, 1919, testified by deposition as follows:

Reside at Tulsa, Oklahoma, and am an oil producer. Resided at Los Angeles in 1905–1915, and was in the oil business. Was a director in the California Midway Oil Company from its organization in October or November, 1908, for about three months, and then from March, 1909, for about a year, and visited the northwest quarter of 32, 31–23, many times. Was familiar with the leasehold interest this company had in it. We began drilling operations there about December, 1908. During my visits to the property in January and February, 1909, I observed new location notices on this land on the hitching post where we were drilling well No. 1. Yes, I talked with McLeod about it. This was quite uppermost in our minds. We had gone in there on the one location to prove up this land and drill this well and afterwards they posted this new location and we entered into an

(Deposition of George Grant Gillette.)

agreement to go on until they drilled the well under the new location. The first location was made by Mr. McMurtry for Chicago parties and the second by New York parties. After we learned of the new locations we of course immediately talked to McLeod about finding out where we were at, and immediately requested they should have a new agreement from McMurtry under the new locations. We continued right along on this well No. 1 under the new locations, to prove up on the property for the benefit of the entire quarter—the northwest quarter of 32. After I learned of the new locations and before I spoke to McLeod about securing this agreement dated May 19, 1909, he said he had an understanding with McMurtry and would get a new agreement; and our understanding was that the operations conducted on that property after January 1, 1909, were being conducted under that understanding and the agreement that was to be obtained pursuant to it. [748—642]

Cross-examination.

The California Midway took this 100 acres—60 acres in the northwest and 40 acres in the northeast quarter of 32—prior to January 1, 1909, and continued to work right along after that date under these new arrangements with McMurtry. I don't think we had anything different after January 1, 1909, from what we had before, that is, what we claimed while I was with the Company. The posting of these new notices on January 1, 1909, did not interrupt or interfere with our work.

(Deposition of George Grant Gillette.)

Redirect Examination.

I did not know in advance that these new locations were to be made. First learned of this some time about February 1st to March 1st, 1909, saw the locations on the post and McLeod told me about it, [749—643]

Testimony of Frederic V. Gordon, for Defendants.

FREDERIC V. GORDON, called by defendant March 7, 1919, testified in open court as follows:

Was Associated with McLeod in the formation of the Thirty-two Oil Company. Had nothing to do with organizing the California Midway. Prior to January 1, 1909, had no information that McMurtry intended to make any new, other or different locations upon any of the McMurtry lands, including the northwest quarter of 32. First learned of this some time in January, 1909, at an informal meeting of the Thirty-Two Oil Company, when McLeod stated that he had been in Bakersfield and McMurtry told him he had located this property, and that he had made a new contract with him under the new locations. He said that if he had known McMurtry was going to relocate the property he would have done it himself, and for others who were interested in the Thirty-Two Company.

Cross-examination.

Yes, I had heard, in December, 1908, I think, that there were imperfections in the powers of attorney under which McMurtry was acting. Heard that at an informal, or it may have been a regular meeting

(Testimony of Frederic V. Gordon.)

of the Thirty-two Oil Company, or the men that were to organize it. McLeod told us. He was always the one to inform us, as he was looking after that. He said that the names were misspelled or initials wrong. I always understood that this happened in the San Benito County Recorder's Office, where they were recorded. McLeod said he thought these irregularities would be fixed up. No, there was no objection on the part of my company continuing with the work there after January 1, 1909, because McLeod stated the work would be for the benefit of the new locations. That is the way I understood it. There was no objection at this meeting in January, 1909, to this arrangement. We accepted it and agreed to it, consented to whatever had been done in regard to it. Presume I am the Gordon referred to [750—644] in this letter of November 14, 1909 (Plaintiff's Exhibit 66), but I didn't go to Clafin's office at that time. I didn't see any written contract at the time this information first came to me.

Redirect Examination.

Yes, in 1910 the company paid the purchase price for this sixty acres, \$60,000 in round numbers. [751—645]

Testimony of W. C. Price, for Defendants.

W. C. PRICE called by defendants March 7, 1919, testified in open court as follows:

Reside at Los Angeles, California, and have lived in that county since 1900. Since 1890 my business has been in this state, principally developing oil. Was one of the organizers of the Thirty-Two Oil

(Testimony of W. C. Price.)

Company who put up \$25,000. Wheat and Wilson had spent a lot of money on the ground, and the part we put up was to pay them back. This lease by Mrs. McLeod, Wheat, Wilson and McLeod to the California Midway Oil Company is what we bought. At the time of the organization of this company December 29, 1908, I was not advised by McLeod or anybody else that McMurtry or anybody else intended to locate the northwest quarter of 32 or any other property on January 1, 1909. Subsequent to that date McLeod, who was our managing director, at the time he brought me this information said that we would be protected and would receive a contract or lease in substance the same as what we had. As near as I can recall, he said he was being protected by McMurtry and he would protect us, but I don't recall his saying anything about a contract at that time. The California Midway was to be protected the same as we were. The work was to go on just the same under the new locators, whatever had been done would inure to the benefit of the new locators. I wasn't very much concerned because I believed it would be fixed up from what McLeod told me. [752—646]

Testimony of J. M. McLeod, for Defendants.

J. M. McLEOD, called by defendants March 7, 1919, testified in open court as follows:

Am not now a stockholder or creditor of either the California Oil Company or the Associated Oil Company. In November, 1908, four associates and myself organized the Cali-

(Testimony of J. M. McLeod.)

California Midway Oil Company, with an authorized stock of one million shares, of which my wife, Mrs. J. M. McLeod, received 200,000 shares for this original lease from McMurtry (Plaintiff's Exhibit 36). During December, 1908 and January, 1909, Mrs. McLeod and myself were the owners of such stock, and I was a director and field manager of the corporation. I put the lumber on the northwest quarter of 32 which went to construct California Midway Oil Company's well No. 1, and was subsequently repaid by the company. This derrick was not completed on January 1, 1909. Actual drilling of this well began January 10, 1909. Prior to January 1, 1909, I was not advised and didn't know that McMurtry or anyone else was going to locate that northwest quarter, or the so-called McMurtry lands on January 1, 1909; nor did I know that the original location notices on that quarter or any other so-called McMurtry lands had not been posted on the right quarter section. After talking this over with Claflin and McMurtry about my coming to Claflin's office about the 2d of January, 1909, and discussing the matter of these relocations of January 1, 1909, I am satisfied that that is the case, and that I learned of this then. As soon as I found out about the new locations being made I immediately asked where I and associates stood. I reminded McMurtry and Claflin that we had no agreements with these new locators, and we were not appraised of the fact that there was to be any. McMurtry assured me that they would make contracts similar to the one we had before on this

(Testimony of J. M. McLeod.)

piece of land, and such paper was then drawn. I now recall this clearly. This new agreement was made [753—647] before the actual drilling started. This 200,000 shares of the California Midway stock issued to Mrs. McLeod was then the only stock issued and she and I were practically the owners of the company. It was understood by all parties interested that the work the California Midway was doing on the quarter section was for the benefit of the whole quarter. Nothing was said between McMurtry and myself prior to January 1, 1909, about him, myself, or anybody else filing new locations on that property. Yes, the California Midway went right along between January 1, 1909 and May 17, 1909, and afterwards, with the development of that property. This company had an option to purchase it for \$1,000 an acre. Later Mrs. McLeod and I signed what interest we had on the other end of the transaction to the Thirty-Two Oil Company, in which company I held about one-seventh interest.

Cross-examination.

Wheat & Wilson were stockholders in the Thirty-Two Oil Company and members of the Wheat, Wilson, McLeod and Gordon association, which existed before the formation of the Thirty-Two Oil Company. Yes, in 1908 I was advised by my attorney, Mr. Claflin, that defects existed in the powers of attorney, and also something in regard to the mix-up in the location notices. I have seen one letter—don't know whether that is the one or not (Plaintiff's Exhibit 65.) I talked with Claflin

(Testimony of J. M. McLeod.)

about these defects prior to January 1, 1909. He said these names were wrong and that the powers of attorney—the certified copies—did not agree with the way the names were spelled in the location notices, as I remember it, and he said that could be fixed up. My experience in the real estate business in Los Angeles is that we would run up against something like that, and we would put in a deed that John Jones, sometimes known as Henry Miller, or something like that,—a similar name,—those things were easily [754—648] taken care of, and I expected that Mr. Clafin would go on and have that matter straightened up in that way. I left the matter entirely to him. I wanted it fixed up, as we had already started to carry out that contract of October 8, 1908, (Plaintiff's Exhibit 36). We continued just as before to lay water lines and get material ready. My recollection is that my understanding after this conversation with Clafin was that he would get McMurtry to get new powers of attorney, or correct the faults. Yes, as I then understood it, the locations would be practically worthless if we could not straighten them out. But I had in mind that McMurtry would correct these faults, and I looked to him to do so, so that I might have my rights under the contract of October 8, 1908. After I discovered these locations had been made on January 1, 1909, I accepted the new contract which was practically the same as the contract of October 8, 1908, as it had been amended. [755—649]

Testimony of A. H. Ricketts, for Defendants.

A. H. RICKETTS, called by defendants, April 6, 1919, testified in open court as follows:

Am an attorney at law of San Francisco. Have practiced in California since 1884, with the exception of 11 years in Nevada. Have practiced mining law exclusively since 1886, and am familiar, in a general way, with the manner of locating and preserving location rights up to the granting of patent in the San Joaquin Valley, which includes Kern River, Coalinga, Lost Hills, Midway, Maricopa and other localities where oil has been found. The first step is usually the posting of a written notice upon the claim, and then—or perhaps just immediately prior thereto—the demarcation of the boundaries upon the surface, if it is on unsurveyed land, and by describing in the notice of location the legal subdivision wherein the property that is sought to be appropriated may lie; then a copy of the notice of location as posted is recorded usually with the county recorder, and if there should so exist, also with the Mining Recorder of the district in which the land lies. Immediately subsequent to the second calendar year after the location, if such be the fact, a certificate, or affidavit, rather, or annual labor on that particular claim is filed by or on behalf of the locators thereof at least in the County Recorder's office. The general custom has been to continue to do \$100 worth of work each year until discovery. And there has been a general custom regarding a chain of title to show the location by

(Testimony of A. H. Ricketts.)

annual proofs of labor as a merchantable and transferable right by the general public and buyers and sellers of oil land. It has been the custom for locators to sell or lease lands so held.

Cross-examination.

Yes, what I have testified to is based almost entirely upon my examination of abstracts of title. No, I never was at a miners' meeting and never discussed such customs or habits with miners of the Midway field. [756—650]

Testimony of Isaac Strassburger, for Defendants.

ISAAC STRASSBURGER, called by defendants March 5, 1919, testified in open court as follows:

Reside in San Francisco. Am and have been engaged in the oil business in the Midway Field, California, since 1899, and know the locality generally known as the North Midway Field in which the lands in suit are. There was no pipeline in that field in 1909. Yes, I knew the general custom in this state at that time among persons who were mining for oil on the question of work and recognized work on the public lands. Eight men would go to work and locate the claim, or two claims, or a dozen claims, or a hundred claims. And these eight locators in a good many cases didn't have much money. They contributed simply their work in locating the lands, and would hunt up somebody that had some means and offer them

(Testimony of Isaac Strassburger.)

the lands for development purposes, and offer to sell out, either for money or lease the lands on a royalty—any basis that they could, because they didn't have the means themselves to develop the lands. The rights of the locators were paramount and recognized by everybody, so much so that if we knew that a certain piece of land was located by certain parties, why everybody kept away from it, to a great extent. There were some exceptions, it is true. The assessment work was the same that was done since the year one. Every man that had a location tried to do and did do a hundred dollars worth of work to keep his claim alive, filed the proof of such work, and such claims were recognized by custom as entitling the locator to hold it until oil was discovered. That was not only the custom, but most of the men thought it was the law. I did. And title of such character, even before discovery, was recognized by custom and bought and sold. Practically every claim in the field was located and held in this way, for money or for royalty. I did it myself and it was the universal way of doing business. [757—651]

Testimony of S. P. Wible, for Defendants.

S. P. WIBLE, called by defendants March 6, 1919, testified in open court as follows:

Reside in Bakersfield, California, and have been acquainted with the Kern River Oil Field ever since it started in 1899 or 1900, and the Midway Oil Field, including its subdivisions—Buena Vista Hills, North Midway, Midway proper, Maricopa,

(Testimony of S. P. Wible.)

and so forth; also the McKittrick, Belle Ridge and Lost Hills Oil fields. Have been engaged in the petroleum business and development of lands in Kern County for petroleum for the last 18 years. There was never any organization or association, with written rules or minutes, or anything of that kind, in the petroleum business in Kern County to my knowledge. Yes, there was a general practice, habit or custom with regard to locating public lands. The general method was to locate the land with a set of locators, generally eight locators to the quarter section; record the notices at the County Recorder's office; and the second year after the location there was generally done \$100 worth of assessment work of some kind, and we worked along that way until the land was developed for oil, doing assessment work each year until discovery of oil, and record the notices of assessment work in the County Recorder's office. After discovery application for patent would be made. Yes, sales of the rights of such locators were made before discovery. It was the general custom for the locator to contract with someone to develop and give them half the lands when patent was obtained. There never was supposed to be any limit to the number of locations you could make. It was considered legitimate for the same set of locators to locate more than one mining claim.

Cross-examination.

Yes, the purpose of posting notices on the land prior to discovery was to protect the locators

(Testimony of S. P. Wible.)

against “jumpers” or other [758—652] people who might attempt to place locations upon the land. I now know that such locations gave the locators no right against the United States, but didn’t know it then.

Redirect Examination.

Yes, I understood that the posting of the notices of location was a compliance with the law, and that upon discovery of oil such discovery would relate back to the date of the notice of location. [759—653]

Testimony of Walter Snook, for Defendants.

WALTER SNOOK, called by defendants March 6, 1919, testified in open court as follows:

Reside at Maricopa, Kern County, California, and have resided there for nearly 19 years. Nineteen years ago I was developing property where Maricopa is now, and have since been engaged in the oil business in Kern County. Knew the country known as the Midway District from 1906 to 1909. That land was a desert up to 1909. Had no value for agriculture. Never heard of any placer miners or petroleum miners’ organization which adopted rules. The general method of appropriating public lands was, first, to find some land that was not claimed by anybody else, that was somewhere in an oil belt, that was prospectively good for oil purposes, and that was vacant; to locate the land by defining the boundaries, marking the corners and setting up a location notice on each claim with

(Testimony of Walter Snook.)

the names of the parties claiming the land. Each person was entitled, as I understood it, to 20 acres in his own name, and after posting the notice, to file a copy with the County Recorder's Office. That gave you a claim on the land for the first year. And then the second year a certain amount of work had to be done on each claim—at least \$100 worth, and proof of labor was to be filed in the County Recorder's Office. That was done yearly until discovery. Then patents were applied for or the claim worked as a mining claim. The work done each year was supposed to give you title—to keep your title in good shape. Yes, if a locator failed to do this yearly work the claim was considered to have been abandoned. The locators as a rule were men without the means of developing; and after they had what they thought was a claim they would try to get capital interested to develop the land and make a discovery, either by a division of the land or on the royalty basis. It was my understanding that you could locate as many claims as you wished, provided [760—654] you used eight names for a quarter section. This was quite generally done and nobody thought there was anything wrong about it.

Cross-examination.

Yes, at that time it was not unusual for claims to be jumped; but there were comparatively few complaints over claims which had been posted. Yes, I have heard of lands covered by these paper locations being protected by armed men to keep off jumpers, but had no personal knowledge of this.

(Testimony of Otis E. Wern.)

STIPULATED that if called by defendants Colin Whittier, M. H. Whittier, E. A. Doran, J. M. Danziger, E. J. Miley, F. Chappelet, W. B. Scott, E. A. Clampet, W. W. Orcutt, and Joseph B. Dabney would testify on direct and cross-examination substantially the same as witnesses Wible and Snook, and that there have been cases where men did not regard the paper locations and attempted to jump them, and that there have been fights about it. [761—655]

Testimony of Otis E. Wern, for Defendants.

OTIS E. WERN, called by defendant March 7, 1919, testified in open court as follows:

Am Secretary of the California Midway Oil Company and have in my possession its books of account, papers and vouchers. Have been upon its property in Section 32 indicated on this blue-print (Defendants' Exhibit "Q-1"), which seems to be correct in that respect. This company is now and has been for some time producing from its wells Nos. 4, 5 and 10 on such land about 64 barrels of oil per day. Well No. 1 was abandoned, and there were no wells Nos. 2, 3 and 6. This statement (Defendants' Exhibit "P-1") shows production from other lands as well as this 60 acres. There was produced from this 60 acres about as follows: In 1910, well No. 1, 78,747 barrels; in 1911, wells Nos. 1 and 4, 97,193 barrels; in 1912, wells Nos. 1, 4 and 5, 39,750 barrels; in 1913, wells 1, 4 and 5, 45,761; in 1914, wells 1, 4 and 5, 35,000 barrels;

(Testimony of Otis E. Wern.)

in 1915, wells 1, 4 and 5, 38,000 barrels; in 1916, wells 1, 4, 5 and 10, 34,000 barrels; 1917, wells 1, 4, 5 and 10, 32,000 barrels; and in 1918, wells 1, 4, 5 and 10, 28,000 barrels. That includes some water which was excluded before it was sold, and this well No. 10 was the last well drilled or begun.

This statement (Defendants' Exhibit S-1) shows the monthly expenditures by this company upon this property, exclusive of the purchase price.

STIPULATED that Defendants' Exhibits "U-1" and "V-1" shows the improvements and production upon the lands involved claimed by the Associated Oil Company, and that defendant could produce a competent witness who would testify that there were no other improvements on said lands or begun thereon. [762—656]

PLAINTIFF'S EXHIBITS.

Plaintiff's Exhibits Nos. 2 and 3.

Affidavit of locator George E. Meinecke and a letter attached thereto, which were read into the deposition of Meinecke.

Plaintiff's Exhibit No. 4.

"POWER OF ATTORNEY.

"Know All Men by These Presents: That Herbert M. Walker, W. A. Keenan, H. E. Bashore, C. Rupert Walker, R. B. Welch, Eugene Metz, F. H. Romaine, Jr., William Mahn, citizens of the United States of America, over the age of 21 years, residents of New York City, in the State of New York, have made, constituted and appointed, and

by these presents do for ourselves, our heirs and assigns, make, constitute and appoint L. B. McMurtry of the city of San Francisco, County of San Francisco, and State of California, our true agent and lawful attorney, irrevocably for ourselves and in our name, place and stead, for the following purposes, viz.:

“To prospect, stake out, record, locate, duly enter and file upon any gold mining claim or claims, either lode or placer, subject to location and entry under and by virtue of the United States Mining Laws in any part of the United States of America.

“To prospect, locate, stake out, record, duly enter and file upon any mineral claim or claims of any character or nature whatever subject to location and entry under and by virtue of the United States Mining Laws in any part of the United States of America.

“To improve, develop, make proof thereof, and perfect the title to be acquired under such entry or entries as required by law.

“To grant, bargain, sell, assign, lease, pledge, mortgage or deed any part or all of such mining claim or claims and to make, sign, execute and deliver any contract or contracts of sale, deed or deeds conveying any part or all of our interest or interests in or to any such mining claim or claims, as may be acquired hereunder in any part of the United States of America, giving and granting unto our said attorney full power and authority to do and perform all and every act and thing whatever required and necessary to be done in and

about the premises as fully to all intents and purposes as we might or could do if personally present with full power of substitution and revocation hereby ratifying and confirming all that our said attorney or his substitute shall lawfully do or cause to be done by virtue thereof. [763—657]

“In Witness Whereof, we have hereunto set our hands and seals this 19th day of December, A. D. 1907.

“HERBERT M. WALKER. (Seal)

“H. E. BASHORE. (Seal)

“R. B. WELCH. (Seal)

“F. H. ROMAINE, Jr. (Seal)

“W. A. KEENAN. (Seal)

“C. RUPERT WALKER. (Seal)

“EUGENE METZ. (Seal)

“WM. MAHN. (Seal)”

Executed Dec. 19, 1907. Recorded in San Benito County, California, April 13, 1908, and in Kern County, California, January 5, 1909.

Plaintiff's Exhibit No. 5.

Power of attorney similar in form to Plaintiff's Exhibit 4, and bearing the following names as signers: Samuel R. Banks, Frank B. Chapman, Julian P. W. Richmond, Frederick S. Thorn, Chas. W. Gardiner, Harry B. Thorn, Geo. W. Berry, and Geo. A. Meinecke.

Executed Dec. 21, 1907. Recorded in San Benito County, California, April 13, 1908, and in Kern County, California, January 5, 1909.

Plaintiff's Exhibit No. 6.

Power of attorney similar in form to Plaintiff's Exhibit 4, and bears the following names as signers: Francis E. Pratt, J. C. Thickens, Wm. F. Christman, Mark W. Hatch, Hamlin E. Hatch, T. R. Bailey, Walter Wilson, J. E. Fanell.

Executed Dec. 19, 1907. Recorded in San Benito County, California, April 13, 1908, and in Kern County, California, January 5, 1909. [764—658]

Plaintiff's Exhibit No. 7.

Power of attorney similar in form to Plaintiff's Exhibit 4, and bears the following names as signers: Frank D. Taylor, Edwin L. Powell, Daniel W. Darling, J. W. Pentz, S. H. Freeman, C. W. Thorn, J. F. Harder, and F. H. Searls.

Executed Dec. 18, 1907. Recorded in San Benito County, California, April 13, 1908, and in Kern County, California, January 5, 1909.

Plaintiff's Exhibit No. 8.

Power of attorney similar in form to Plaintiff's Exhibit 4, and bears the following names as signers: Bert S. Denison, Hokan Roll, Thomas H. Lee, J. L. Bacon, J. H. Dolbers, W. G. Mahoney, H. Dagenbuck, R. E. Pierce, C. W. Nettels, F. H. Denison, G. A. Morningstar, J. F. Gorman, Jesse Cunningham, Simon Newhof, H. B. Reutschler, and A. A. Converse.

Executed Dec. 21, 1903. Recorded in San Benito County, California, Dec. 29, 1903, and in Kern County, California, November 9, 1908.

Plaintiff's Exhibit No. 9.

Power of attorney similar in form to Plaintiff's Exhibit 4, and bears the following names as signers: F. P. Blackman, A. J. Rowley, Harry Sterling, W. Y. Husbands, B. N. O'Neill, D. G. Cunningham, James Clifford, John Ryan, Joseph Norton, James Norton, A. L. Johns, H. T. Hunt, W. Michals, T. G. Cranston, Wm. Jones, and C. A. Dunbar.

Executed December 21, 1903. Recorded in San Benito County, California, December 29, 1903, and in Kern County, California, November 9, 1908. [765—659]

Plaintiff's Exhibit No. 10.

"LOCATION NOTICE—PLACER CLAIM.

"Notice is hereby given that the undersigned citizens of the United States, over the age of twenty-one years, in compliance with the requirements of Chapter VI, Title 32 of the Revised Statutes of the United States, and the local customs, laws and regulations have this day located and claim the following described placer mining ground, viz.:

"The Northwest quarter of Section Thirty-two (32), Township Thirty-one (31) So., Range Twenty-three (23) East, M. D. B. & M.

"That said land is located for the purpose of developing petroleum, gypsum and other minerals therein and thereon.

"Situated in the Midway Mining District, County of Kern, State of California.

“This claim shall be known as the Montana placer mining claim.

“Located first day of January, 1909.

“The date of the discovery and the posting of this notice is the first day of January, 1909.

“HERBERT M. WALKER.

“H. E. BASHORE.

“R. B. WELCH.

“F. H. ROMAINE, Jr.

“W. A. KEENAN.

“C. RUPERT WALKER.

“EUGENE METZ.

“WILLIAM MAHN.

“Witness: L. B. McMURTRY.”

Recorded in Kern County, California, January 5, 1909.

Plaintiff's Exhibit No. 11.

This exhibit embraces nineteen mining location notices, dated January 1, 1909, and recorded January 5, 1909, at the request of L. B. McMurtry.

Five of these notices bear the names of the signers of the power of attorney, Plaintiff's Exhibit 4, as follows:

Indiana, covering NW. $\frac{1}{4}$ Sec. 34, T. 31 S., R. 23 E.;
Maine, covering NW. $\frac{1}{4}$ Sec. 20 T. 31 S., R. 23 E.;
Rhode Island, covering NW. $\frac{1}{4}$ Sec. 22, T. 31 S., R. 23 E.;

Pennsylvania, covering NW. $\frac{1}{4}$ Sec. 26, T. 31 S., R. 23 E.;

Texas, covering NW. $\frac{1}{4}$ Sec. 28, T. 31 S., 23 E.;

Five of these notices bear the names of the signers

of the power of attorney, Plaintiff's Exhibit 5, as follows:

Minnesota, covering SE. $\frac{1}{4}$ Sec. 34, T. 31 S., R. 23 E.; [766—660]

Massachusetts, covering SE. $\frac{1}{4}$ Sec. 20, T. 31 S., R. 23 E.;

New Jersey, covering SE. $\frac{1}{4}$ Sec. 22, T. 31 S., R. 23 E.;

Virginia, covering SE. $\frac{1}{4}$ Sec. 26, T. 31 S., R. 23 E.;

Wisconsin, covering SE. $\frac{1}{4}$ Sec. 28, T. 31 S., R. 23 E.;

Four of these notices bear the names of the signers of the power of attorney, Plaintiff's Exhibit 6, as follows:

Iowa, covering SW. $\frac{1}{4}$ Sec. 34, T. 31 S., R. 23 E.;

Vermont, SW. $\frac{1}{4}$ Sec. 20, T. 31 S., R. 23 E.;

New York, covering SW. $\frac{1}{4}$ Sec. 22, T. 31 S., R. 23 E.;

Michigan, covering SW. $\frac{1}{4}$ Sec. 28, T. 31 S., R. 23 E.;

Five of these notices bear the names of the signers of the power of attorney, Plaintiff's Exhibit 7, as follows:

Illinois, covering NE. $\frac{1}{4}$ Sec. 34, T. 31 S., R. 23 E.;

New Hampshire, covering NE. $\frac{1}{4}$ Sec. 20, T. 31 S., R. 23 E.;

Connecticut, covering NE. $\frac{1}{4}$ Sec. 22, T. 31 S., R. 23 E.;

Delaware, covering NE. $\frac{1}{4}$ Sec. 26, T. 31 S., R. 23 E.;

Ohio, covering NE. $\frac{1}{4}$ Sec. 28, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 12.

This exhibit embraces three placer mining location notices bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 4, as follows:

Dundos, covering NW. $\frac{1}{4}$ Sec. 13, T. 31 S., R. 23 E. Dated March 6, 1909, recorded March 13, 1913, at request of J. E. Harrison.

Florida, covering NW. $\frac{1}{4}$ Sec. 24, T. 31 S., R. 23 E. Dated January 1, 1909. Recorded January 5, 1909, at request of L. B. McMurtry.

Wyoming, covering NW. $\frac{1}{4}$ Sec. 4, T. 32 S., R. 23 E. Dated January 1, 1909. Recorded January 5, 1909, at request of L. B. McMurtry. [767—661]

Plaintiff's Exhibit No. 13.

This exhibit embraces seven placer mining location notices bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 7, as follows:

Ontario, covering NE. $\frac{1}{4}$ Sec. 13, T. 31 S., R. 23 E. Dated March 6, 1909. Recorded March 13, 1909, at request of J. E. Harrison.

Alabama, covering NE. $\frac{1}{4}$ Sec. 24, T. 31 S., R. 23 E. Dated Jan. 1, 1909. Recorded Jan. 5, 1909, at request of L. B. McMurtry.

Idaho, covering NE. $\frac{1}{4}$ Sec. 32, T. 31 S., R. 23 E. Dated Jan. 1, 1909. Recorded Jan. 5, 1909, at request of L. B. McMurtry.

Nebraska, covering NE. $\frac{1}{4}$ Sec. 4, T. 32 S., R. 23 E. Dated Jan. 1, 1909. Recorded Jan. 5, 1909, at request of L. B. McMurtry.

Kansas, covering NE. $\frac{1}{4}$ Sec. 9, T. 32 S., R. 23 E.

Dated Jan. 1, 1909. Recorded Jan. 5, 1909 at request of L. B. McMurtry.

Gem #1, covering NW. $\frac{1}{4}$ Sec. 5, T. 32 S., R. 23 E. Dated June 27, 1909. Recorded June 29, 1909, at request of L. B. McMurtry.

Hawk, covering NE. $\frac{1}{4}$ Sec. 7, T. 32 S., R. 23 E. Dated May 10, 1909. Recorded May 27, 1909, at request of L. B. McMurtry.

Plaintiff's Exhibit No. 14.

This exhibit embraces three placer mining location notices bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 6, dated January 1, 1909, and recorded January 5, 1909, at request of L. B. McMurtry, as follows:

Mississippi, covering SW. $\frac{1}{4}$ Sec. 24, T. 31 S., R. 23 E.;

Maryland, coverng SW. $\frac{1}{4}$ Sec. 26, T. 31 S., R. 23 E.;

Napa, covering SW. $\frac{1}{4}$ Sec. 32, T. 31 S., R. 23 E.
[768—662]

Plaintiff's Exhibit No. 15.

This exhibit embraces two placer mining location notices bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 5, dated January 1, 1909, and recorded January 5, 1909, at request of L. B. McMurtry, as follows:

Louisiana, covering SE. $\frac{1}{4}$ Sec. 24, T. 31 S., R. 23 E.;

Modoc, covering SE. $\frac{1}{4}$ Sec. 32, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 16.

This exhibit embraces four placer mining location notices dated July 16, 1909, and recorded July 26, 1909, at request of L. M. Cox, as follows:

Midas, covering NW. $\frac{1}{4}$ Sec. 27, T. 32 S., R. 23 E., and bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 4;

Douglas, covering NE. $\frac{1}{4}$ Sec. 27, T. 32 S., R. 23 E., and bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 7;

Greenwich, covering SW. $\frac{1}{4}$ Sec. 27, T. 32 S., R. 23 E., and bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 6;

Aberdeen, covering SE. $\frac{1}{4}$ Sec. 27, T. 32 S., R. 23 E. and bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 5.

Plaintiff's Exhibit No. 17.

This exhibit embraces three placer mining location notices bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 4, dated March 6, 1909, and recorded March 8, 1909, at request of J. T. Abbott, as follows: [769—663]

Georgia, covering NW. $\frac{1}{4}$ Sec. 4, T. 31 S., R. 23 E.;
Paradox No. 1, covering NW. $\frac{1}{4}$ Sec. 6, T. 31 S., R. 23 E.;

Faith, covering NW. $\frac{1}{4}$ Sec. 10, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 18.

Quitclaim deed, dated March 8, 1909, from the persons in whose names said placer locations Georgia, Paradox No. 1 and Faith were made (Plaintiff's Ex-

hibit 17), by L. B. McMurtry, attorney in fact, to Sue Greenleaf, embracing the lands included in such locations. Consideration \$10.00. Executed March 8, 1909. Recorded March 8, 1909, at request of Sue Greenleaf.

Plaintiff's Exhibit No. 19.

This exhibit embraces three placer mining location notices bearing the names appearing as the signers of the power of attorney, Plaintiff's Exhibit 7, dated March 6, 1909, and recorded March 8, 1909, at request of J. T. Abbott, as follows:

Waterloo, covering NE. $\frac{1}{4}$ Sec. 4, T. 31 S., R. 23 E.;
Paradox, No. 2, covering NE. $\frac{1}{4}$ Sec. 6, T. 31 S., R. 23 E.;

Acme, covering NE. $\frac{1}{4}$ Sec. 10, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 20.

Quitclaim deed, dated March 8, 1909, from the persons in whose names said placer locations Waterloo, Paradox No. 2 and Acme were made (Plaintiff's Exhibit 19), by L. B. McMurtry, attorney in fact, to Sue Greenleaf, embracing the lands included in such locations. Consideration \$10. Executed March 8, 1909. Recorded March 8, 1909, at request of Sue Greenleaf. [770—664]

Plaintiff's Exhibit No. 21.

This exhibit embraces three placer mining location notices bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 6, dated March 6, 1909, and recorded March 8, 1909, at request of J. T. Abbott, as follows:

Louisiana, covering SW. $\frac{1}{4}$ Sec. 4, T. 31 S., R. 23 E.;

Paradox No. 3, covering SW. $\frac{1}{4}$ Sec. 6, T. 31 S., R. 23 E.;

Saint Anthony, covering SW. $\frac{1}{4}$ Sec. 10, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 22.

Quitclaim deed, dated March 8, 1909, from the persons in whose names said placer locations Louisiana, Paradox No. 3, and Saint Anthony were made (Plaintiff's Exhibit 21), by L. B. McMurtry, Attorney in fact, to Sue Greenleaf, embracing the lands included in such locations. Consideration \$10. Executed March 8, 1909. Recorded March 8, 1909, at request of Sue Greenleaf.

Plaintiff's Exhibit No. 23.

This exhibit embraces two placer mining location notices bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 5, dated March 6, 1909, and recorded March 8, 1909, at request of J. T. Abbott, as follows:

Kentucky, covering SE. $\frac{1}{4}$ Sec. 4, T. 31 S., R. 23 E.;

Paradox No. 4, covering SE. $\frac{1}{4}$ Sec. 6, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 24.

Quitclaim deed dated March 8, 1909, from the persons in whose names said placer locations Kentucky and Paradox No. 4 were made (Plaintiff's Exhibit 23), by L. B. McMurtry, attor-

ney in fact, to Sue Greenleaf, embracing the lands included in such locations. [771—665] Stated consideration \$10. Executed March 8, 1909. Recorded March 8, 1909, at request of Sue Greenleaf.

Plaintiff's Exhibit No. 25.

This exhibit embraces four placer mining location notices, dated March 18, 1909, and recorded March 26, 1909, at request of W. C. Rupert, and one quitclaim deed, as follows:

Portland, covering NW. $\frac{1}{4}$ Sec. 20, T. 31 S., R. 24 E., and bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 4.

Oregon, covering NE. $\frac{1}{4}$ Sec. 20, T. 31 S., R. 24 E., and bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 7.

Anheuser, covering SW. $\frac{1}{4}$ Sec. 20, T. 31 S., R. 24 E., and bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 6.

Dalles, covering SE. $\frac{1}{4}$ Sec. 20, T. 31 S., R. 24 E., and bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 5.

Quitclaim deed dated March 17, 1909, from the persons in whose names said placer locations Portland, Oregon, Anheuser, and Dallas were made, by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing the lands included in such locations. Consideration \$10. Executed March 9, 1910. Recorded March 10, 1910, at request of Bakersfield Abstract Company.

Plaintiff's Exhibit No. 26.

This exhibit embraces nine placer mining location notices, dated January 1, 1909, and recorded January 4, 1909, at request of D. Kinsey, and four quitclaim deeds, as follows: [772—666]

Mischief #12, covering SW. $\frac{1}{4}$ Sec. 1, T. 31 S., R. 24 E., bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 4.

Mischief #8, covering SW. $\frac{1}{4}$ Sec. 2, T. 31 S., R. 24 E., bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 4.

Quitclaim deed dated February 5, 1909, from the persons in whose names said placer locations Mischief #12 and Mischief #8 were made, by L. B. McMurtry, attorney in fact, to David Kinsey. Consideration \$10. Executed February 10, 1909. Recorded April 18, 1910, at request of David Kinsey.

Mischief #10, covering NW. $\frac{1}{4}$ Sec. 1, T. 31 S., R. 24 E., bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 7.

Mischief #7, covering NW. $\frac{1}{4}$ Sec. 12, T. 31 S., R. 24 E., bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 7.

Quitclaim deed, dated February 5, 1909, from the persons in whose names said placer locations Mischief #10 and Mischief #7 were made, by L. B. McMurtry, attorney in fact, to David Kinsey. Consideration \$10. Executed February 10, 1909. Recorded April 18, 1909, at request of David Kinsey.

Mischief #9, covering NE. $\frac{1}{4}$ Sec. 1, T. 31 S., R. 24 E., bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 6.

Mischief #4, covering NE. $\frac{1}{4}$ Sec. 12, T. 31 S., R. 24 E., bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 6.

Mischief #5, covering NE. $\frac{1}{4}$ Sec. 14, T. 31 S., R. 24 E., bearing the names of the signers of the power of attorney, Plaintiff's [773—667] Exhibit 6.

Quitclaim deed dated February 5, 1909, from the persons in whose names said placer locations Mischief #9, Mischief #4 and Mischief #5 were made, by L. B. McMurtry, attorney in fact, to David Kinsey, embracing the lands included in such locations. Consideration \$10. Executed February 10, 1909. Recorded April 18, 1910, at request of David Kinsey.

Mischief #11, covering SE. $\frac{1}{4}$ Sec. 1, T. 31 S., R. 24 E., bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 5.

Mischief #6, covering SE. $\frac{1}{4}$ Sec. 3, T. 31 S., R. 24 E., bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 5.

Quitclaim deed, dated February 5, 1909, from the persons in whose names said placer locations Mischief 11 and Mischief 5 were made, by L. B. McMurtry, attorney in fact, to David Kinsey, embracing the lands included in such locations. Consideration \$10. Executed February 10, 1909. Recorded April 18, 1909, at request of David Kinsey.

Plaintiff's Exhibit No. 27.

This exhibit embraces thirty-three placer mining location notices, dated January 1, 1909, and re-

corded March 27, 1909, at request of P. R. Longley, and two grant deeds, as follows:

Elite Numbers Eight, Twelve, Twenty, Twenty-four, Twenty-seven, Thirty-three, Thirty-seven, and Forty-one, covering the northwest quarter of Sections 2, 3, 5, 6, 7, 9, 10 and 11, respectively, of T. 31 S., R. 24 E., and each made in the names of the persons who signed the power of attorney, Plaintiff's Exhibit 4;

Elite Numbers Seven, Eleven, Nineteen, Twenty-three, [774—668] Twenty-six, Thirty-two, Thirty-six and Forty, covering the northeast quarter of sections 2, 3, 5, 6, 7, 9, 10 and 11, respectively, of T. 31 S., R. 24 E., and each made in the names of the persons who signed Plaintiff's Exhibit 7;

Elite Numbers Ten, Eighteen, Twenty-two, Twenty-nine, Thirty-one, Thirty-five, Thirty-nine, and Forty-three, covering the southwest quarter of sections 3, 5, 6, 8, 9, 10, 11 and 12, respectively, T. 31 S., R. 24 E., and each bearing the names appearing on Plaintiff's Exhibit 6;

Elite Numbers Five, Seventeen, Twenty-one, Twenty-five, Twenty-eight, Thirty, Thirty-four, Thirty-eight, and Forty-two, covering the southeast quarter of sections 2, 5, 6, 7, 8, 9, 10, 11 and 12, respectively, of T. 31 S., R. 24 E., and bearing the names appearing on Plaintiff's Exhibit 5;

Grant deed, dated April 9, 1909, from the persons in whose names said placer locations were made, by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing the lands included in such locations, namely, N. $\frac{1}{2}$ and SE. $\frac{1}{4}$ sec. 2; N. $\frac{1}{2}$ and

SW. $\frac{1}{4}$ sec. 3; all of secs. 5 and 6; N. $\frac{1}{2}$ and SE. $\frac{1}{4}$ sec. 7; S. $\frac{1}{2}$ sec. 8; all of secs. 9, 10 and 11; S. $\frac{1}{2}$ sec. 12, all in T. 31 S., R. 24 E., M. D. B. & M. Consideration \$10. Recorded May 10, 1909, at request of J. M. McLeod;

Grant deed, dated August 1, 1910, from J. M. McLeod and Eva E. McLeod, his wife, to Esperanza Consolidated Oil Company, a corporation, embracing certain described portions of said sections 10, 11 and 12, T. 31 S., R. 24 E., together with other lands. Consideration \$10. Executed August 1, 1910. Recorded August 10, 1910, at request of Chas. W. Slack. [775—669]

Plaintiff's Exhibit No. 28.

Atlanta placer mining location notice covering NW. $\frac{1}{4}$ sec. 32, T. 31 S., R. 23 E., made in the names of eight of the signers of the power of attorney, Plaintiff's Exhibit 8, namely: J. L. Bacon, J. H. Dolbers, W. H. Mahoney, C. W. Nettels, Thomas H. Lee, Hokan Roll, Bert S. Dennison, and H. Hagenbuck. Dated January 3, 1907, and recorded January 5, 1907, at request of L. B. McMurtry.

Plaintiff's Exhibit No. 29.

This exhibit embraces twenty-six placer location notices covering various quarter-sections of land in T. 31 S., R. 23 E., each bearing the names of eight of the signers of the powers of attorney, Plaintiff's Exhibits 8 and 9. Dated January 1 and January 3, 1907, and recorded January 5, 1907, at request of L. B. McMurtry.

Plaintiff's Exhibit No. 30.

Assignment and conveyance from the signers of the powers of attorney, Plaintiff's Exhibits 4, 5, 6 and 7, by L. B. McMurtry, attorney in fact, to C. L. Claflin *or* all right, title and interest in certain agreements (Plaintiff's Exhibits 33, 53, 55 and 57) and "all of said parcels of land described in said agreements, as aforesaid." Acknowledged December 3, 1909, and recorded December 6, 1909, at request of L. B. McMurtry. [776—670]

Plaintiff's Exhibit No. 31.

Assignment and conveyance from C. L. Claflin to L. B. McMurtry of all of the right, title and interest assigned and conveyed in Plaintiff's Exhibit 30. Acknowledged December 4, 1909, and recorded December 6, 1909, at request of L. B. McMurtry.

Plaintiff's Exhibit No. 32.

Assignment by L. B. McMurtry and the signers of the powers of attorney, Plaintiff's Exhibits 4, 5, 6 and 7, by L. B. McMurtry, attorney in fact, to Pacific Oil Lands Company, of all right, title and interest in nine drilling agreements, dated August 4, 1910, in which Associated Oil Company, W. F. Herrin, W. S. Porter, J. C. Kirkpatrick, R. P. Schwerin, O. Scribner, Paul Shoup, Rudolph Herold, Jr., and Frank H. Buck are first parties, and L. B. McMurtry and the signers of said powers of attorney are second parties, each of said agreements (of which Defendants' Exhibit "K" is one) covering one of the following tracts of land, namely:

Tract 1. 160 acres in N. $\frac{1}{2}$ sec. 32, T. 31 S., R. 23 E.

Tract 2. 160 acres in N. $\frac{1}{2}$ N. $\frac{1}{2}$ sec. 20, T. 31 S., R. 23 E.

Tract 3. 160 acres in S. $\frac{1}{2}$ S. $\frac{1}{2}$ sec. 20, T. 31 S., R. 23 E.

Tract 4. 160 acres in N. $\frac{1}{2}$ N. $\frac{1}{2}$ sec. 22, T. 31 S., R. 23 E.

Tract 5. 160 acres in S. $\frac{1}{2}$ S. $\frac{1}{2}$ sec. 22, T. 31 S., R. 23 E.

Tract 6. 160 acres in N. $\frac{1}{2}$ N. $\frac{1}{2}$ sec. 26, T. 31 S., R. 23 E.

Tract 7. 160 acres in S. $\frac{1}{2}$ S. $\frac{1}{2}$ sec. 26, T. 31 S., R. 23 E.

Tract 8. 160 acres in N. $\frac{1}{2}$ N. $\frac{1}{2}$ sec. 34, T. 31 S., R. 23 E. [777—671]

Tract 9. 160 acres in S. $\frac{1}{2}$ S. $\frac{1}{2}$ sec. 34, T. 31 S., R. 23 E.

“Also, all our right, title and interest in and to that certain agreement made and entered into the 17th day of May, 1909, between the undersigned as parties of the first part, and J. M. McLeod party of the second part, covering the following described real property situate in the County of Kern, State of California, to wit”:

Sec. 24, T. 31 S., R. 23 E., M. D. B. & M.

Executed Sept. 1, 1911, and recorded September 8, 1913, at request of Pacific Oil Lands Co.

Plaintiff's Exhibit No. 33.

Development agreement dated May 17, 1909, between the signers of the powers of attorney, Plain-

tiff's Exhibits 4 and 7, by L. B. McMurtry, attorney in fact, and J. M. McLeod, as follows:

"WITNESSETH: That whereas, the said parties of the first part were prior to this day the owners of that certain lot, piece or parcel of petroleum land situate, lying and being in the County of Kern, State of California, to wit: the north half of Section Thirty-two (32), in Township Thirty-one (31), South of Range Twenty-three (23) East, M. D. B. & M., and,

"Whereas the said parties of the first part have heretofore this day duly conveyed said parcel of land to said party of the second part, and

"Whereas, the said party of the second part has heretofore erected a suitable derrick for use in drilling an oil well with a standard drilling rig upon the South half of the Northwest quarter and upon the South half of the Northeast quarter of said Section Thirty-two (32), and has also erected on said North half of said section of land all bunk-houses which will be necessary for use in conducting drilling operations on said North half of said Section Thirty-two (32), and has also commenced the actual work of drilling for oil with a standard drilling rig and tools, at the point where one of said derricks was erected, to wit: on the Northwest quarter of said section:

"Now, therefore, in consideration of said conveyance said party of the second part hereby agrees as follows:

"1. To continue said work of drilling at the point where the same is now being done diligently

with said rig until he shall have reached a depth of at least Twenty-five hundred feet or until he shall have discovered oil in paying quantities at a lesser depth. [778—672]

“2. Said party of the second part further agrees that within thirty days after the discovery of oil in paying quantities in said well, he will begin the actual work of drilling for oil on the remaining quarter-section of said land and at the point where the remaining derrick on said section has been erected as hereinbefore provided, and will continue such drilling diligently until a depth of 2,500 feet is reached in said last mentioned well or until oil is discovered therein in paying quantities at a lesser depth.

“3. The said party of the second part further agrees that when oil in paying quantities shall be discovered upon other quarter-sections of the land hereinbefore described, he will immediately make application to the Government of the United States for Letters Patent to said quarter-section of land, and that when the Receiver's Final Receipt therefor is issued, he will by a good and sufficient deed of grant, bargain and sale, convey to the said parties of the first part the North one hundred acres of such quarter-section.

“It is mutually agreed that all costs, expenses and disbursements incurred in procuring said letters patent shall be paid by the respective parties hereto in equal shares, that is to say, the said parties of the first part will pay one-half thereof and the said

party of the second part will pay the remaining one-half.

“It is expressly agreed that oil in paying quantities within the terms of this agreement shall mean a well that will produce 25 barrels of crude petroleum during each twenty-four hours of continuous pumping.

“It is further mutually agreed that time is of the essence of this agreement, and that if the said party of the second part shall fail to perform any obligations agreed to be performed by him under the terms of this agreement, and within the time hereinbefore provided therefor, he will forfeit all rights hereunder and the said parties of the first part may immediately take possession of all of said property and the said party of the second part will immediately reconvey all of said North half of said Section 32 to said parties of the first part.

“IT is further agreed that all the terms, conditions and obligations of this agreement shall bind the parties hereto and their heirs, executors and administrators and assigns.”

Executed May 28, 1909, and recorded August 6, 1909, at request of C. L. Claffin.

Said agreement bears the following endorsements:

“Full assignment of within agreement to L. B. McMurtry. See Book 5, page 363 of Assignments.

CHAS. A. LEE,

County Recorder.

By R. C., Deputy.”

“Full assignment of within agreement to C. L. Claflin. See Book 5, page 359 of Assignments.

CHAS. A. LEE,
County Recorder.
By R. C., Deputy.”

“Full assignment of within agreement to 32 Oil Co. See Book 5, page 354 of Assignments.

CHAS. A. LEE,
County Recorder.
By R. C., Deputy.” [779—673]

Plaintiff's Exhibit No. 34.

Quitclaim deed, dated May 17, 1909, from the signers of the powers of attorney, Plaintiff's Exhibits 4 and 7, by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing N. $\frac{1}{2}$ sec. 32, T. 31 S., R. 23 E. Consideration \$10. Executed May 17, 1909, and recorded August 6, 1909, at request of C. L. Claflin.

Plaintiff's Exhibit No. 35.

Grant deed, dated May 17, 1909, from the signers of the powers of attorney, Plaintiff's Exhibits 4, 5, 6 and 7 by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing sec. 34 and N. $\frac{1}{2}$ sec. 32, T. 31 S., R. 23 E. Consideration \$10. Executed May 17, 1909, and recorded June 29, 1909, at request of J. M. McLeod.

Plaintiff's Exhibit No. 36.

Development agreement, dated October 8, 1908, between the signers of the powers of attorney, Plaintiff's Exhibits 8 and 9, by L. B. McMurtry, attorney in fact, and Mrs. J. M. McLeod, as follows:

“WITNESSETH, that whereas the said parties of the first part are the owners of all of Section Thirty-two (32) in Section Thirty-one (31) South, of Range Twenty-three (23) East, M. D. B. & M., in Kern County, California, bases upon the certain placer mining locations, and

“Whereas, said parties of the first part are desirous of having the said land prospected for petroleum and of securing letters patent from the Government of the United States for said land, and

“Whereas, the said parties of the second part in consideration of the covenants hereinafter contained on the part of the said parties of the first part is willing to undertake the drilling for petroleum on said land;

“Now, therefore, the said party of the second part agrees to proceed diligently to drill at his own cost, one well in the exact center of said section of land with a standard rig and string of tools, and the said parties of the first part agree that when said party of the second part has discovered oil in said well, they will upon demand of the said party of the second part, immediately proceed to make application to the Government of the United States for letters patent to said land,— [780—674]

“It is further agreed that said party of the second part shall pay one-half of the proper expenses and cost of procuring such patent, and that when final receiver’s receipts for the purchase price of said land are issued, said parties of the first part will upon demand of said party of the second part, execute a grant, bargain and sale deed conveying

to said party of the second part the following portions of said section of land, to wit: The whole of the North half of the X South half and the South half of the North half of said Section Thirty-two (32), being a total of Three hundred and twenty (320) acres.

“It is further agreed that all the stipulations, agreements, covenants and conditions herein contained shall bind the heirs, executors, administrators and assigns of the parties and each of the parties hereto.”

Plaintiff's Exhibit No. 37.

“THIS IS TO CERTIFY that for and in consideration of the sum of one dollar, and other valuable considerations, I have this day sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and convey to W. D. Wilson, W. R. Wheat and F. V. Gordon, an undivided three-fourths ($\frac{3}{4}$) interest in and to all lands acquired by me, either by lease or agreement for deed, in section 32, Township 31 S., Range 23 E., M. D. M., and also in section 4, Township 32 S., Range 23 E., M. D. M., said lands having been acquired by me from L. B. McMurtry et al., the said Wilson, Wheat and Gordon having acquired each an undivided one-quarter ($\frac{1}{4}$) interest in said lands from me.

“IN WITNESS WHEREOF I have hereunto set my hand and seal this 20th day of November, 1908.

MRS. J. M. McLEOD,

By J. M. McLEOD,

Her Attorney in Fact.”

Executed Nov. 20, 1908.

Plaintiff's Exhibit No. 38.

Development agreement, dated November 11, 1908, between W. D. Wilson, W. R. Wheat, J. M. McLeod and F. V. Gordon, of the first part, and W. C. Price, Wm. Lacy and R. H. Lacy, of the second part, affecting the N. $\frac{1}{2}$ sec. 4, T. 32 S., R. 23 E., and N. $\frac{1}{2}$ S. $\frac{1}{2}$ and South 120 acres of sec. 32, T. 31 S., R. 23 E. [781—675]

Plaintiff's Exhibit No. 39.

Lease dated November 26, 1908, from Mrs. J. M. McLeod to California Midway Oil Company, a corporation, embracing 60 acres of S. $\frac{1}{2}$ NW. $\frac{1}{4}$ Sec. 32, T. 31 S., R. 23 E., running to November 4, 1928, with right of renewal, for drilling for and producing oil and gas and other minerals, and containing stipulations as to forfeiture.

Plaintiff's Exhibit No. 40.

“ASSIGNMENT OF INTERESTS IN SECTION
32.

“THIS IS TO CERTIFY that for and in consideration of the sum of Eight Thousand Dollars, to us in hand paid, the receipt whereof is hereby acknowledged, we have this day sold, assigned, transferred and set over and do hereby sell, assign, transfer and set over to the 32 Oil Company, a corporation, all our right, title and interest in and to all that certain real property situate in the County of Kern, State of California, and more particularly described as follows, to wit:

“The S. 120 acres of the N. $\frac{1}{2}$ of Section 32; and the N. $\frac{1}{2}$ of the S. $\frac{1}{2}$ of said Section 32, Township 31 S., R. 23 E., M. D. B. & M., containing 280 acres.

“We also hereby sell, assign, transfer and set over to the 32 Oil Company a corporation all the following described leases:

“Lease No. 1 executed by the California Midway Oil Company, upon the S. 60 acres of the S. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of said section 32;

“Also Lease No. 2 executed by the California Midway Oil Company on the NW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ and the W. $\frac{1}{2}$ of the NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of said section 32, containing 60 acres;

“Also Lease No. 3, executed by the California Midway Oil Company, a corporation, upon the W. 40 acres of the S. 60 acres of S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of said section 32;

“Also Lease No. 4, executed by A. T. Jergins, Geo. G. Gillett and J. M. McLeod upon the E. 20 acres of the N. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ of said section 32;

“Also lease No. 5, executed by A. T. Jergins, Geo. G. Gillett and J. M. McLeod upon the E. 20 acres of the S. 60 acres of the NE. $\frac{1}{4}$ of said section 32;

“Also lease No. 6 executed by Geo. W. Walker and Chas. S. Fuller (assigned to Olig Crude Oil Company) upon the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of said section 32, and containing 40 acres.

“Also Lease No. 7 executed by Geo. W. Walker and Chas. S. Fuller for the NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of said section 32, containing 40 acres, all of said lands

being in Township 31 S., Range 23 E. M. D. B. & M.
[782—676]

“IN WITNESS WHEREOF we have hereunto
set our hands and seals this 29th day of December,
1908.

“MRS. J. M. McLEOD. (Seal)

“By J. M. McLEOD. (Seal)

“Her Attorney in Fact. (Seal)

“J. M. McLEOD. (Seal)

“W. R. WHEAT. (Seal)

“W. D. WILSON. (Seal)

“F. V. GORDON. (Seal)”

Acknowledged Dec. 29, 1908. Recorded May 6,
1909.

Plaintiff's Exhibit No. 41.

Lease to Nov. 26, 1928, by 32 Oil Company to California Midway Oil Company, of NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, and W. $\frac{1}{2}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, and the South 60 acres of the S. $\frac{1}{2}$ NW. $\frac{1}{4}$, and the West 40 acres of the South 60 acres of S. $\frac{1}{2}$ NE. $\frac{1}{4}$, all in Sec. 32, T. 31 S., R. 23 E., M. D. B. & M., and containing 160 acres, more or less.

Acknowledged Nov. 30, 1909. Recorded Jan. 3,
1910.

Plaintiff's Exhibit No. 42.

Deed dated April 29, 1910, from 32 Oil Company to California Midway Oil Company, embracing the South 60 acres of NW. $\frac{1}{4}$ Sec. 32, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 43.

Assignment dated Nov. 4, 1909, from J. M. McLeod to 32 Oil Company of all rights under Plaintiff's Exhibit 33.

Plaintiff's Exhibit No. 44.

Deed dated March 22, 1909, from the signers of the power of attorney, Plaintiff's Exhibit 4, by L. B. McMurtry, attorney in fact, and L. B. McMurtry to Columbus Midway Oil Company, embracing the following: Commencing at the northwest corner of the NW. $\frac{1}{4}$ of Sec. 32, and running thence at right angles [783—677] southerly 1650 feet; thence at right angles easterly 1056 feet; thence at right angles northerly 1650 feet to the northerly line of Sec. 32, thence at right angles westerly along said northerly line of Sec. 32, 1056 feet, containing approximately 40 acres of land more or less, all in T. 31 S., R. 23 E. M. D. B. & M.

Plaintiff's Exhibit No. 45.

Deed dated Nov. 22, 1909, from Columbus Midway Oil Company to L. B. McMurtry, embracing the lands conveyed by Plaintiff's Exhibit 44.

Plaintiff's Exhibit No. 46.

Deed dated July 22, 1910, from J. M. McLeod and Eva E. McLeod, his wife, to W. F. Herrin, W. S. Porter, J. C. Kirkpatrick, R. P. Schwerin, O. Scribner, Paul Shoup, Rudolph Herold, Jr. and Frank H. Buck, embracing the following: The N. $\frac{1}{2}$ of the

N.1/2, and the S.1/2 of the S.1/2 of Sec. 22; the N.1/2 of the N.1/2, and the S.1/2 of the S.1/2 of Sec. 26; and the N.1/2 of the N.1/2 of Sec. 34, all in T. 31 S., R. 23 E. Also commencing at a point on the northerly line of Sec. 32 distant thereon 1056 feet easterly from the northwest corner of said section; thence easterly along said northerly line of Sec. 32, 1584 feet; thence at right angles southerly 1650 feet; thence at right angles westerly 1584 feet; thence at right angles northerly 1650 feet to the northerly line of Sec. 32 and point of commencement, being a portion of Sec. 32, T. 31 S., R. 23 E., containing 60 acres, more or less. Also commencing at the northeast corner of Section 32, T. 31 S., R. 23 E., thence westerly along the northerly line of said Sec. 32, 2640 feet; thence at right angles southerly 1650 feet; thence at right angles easterly 2640 feet to the easterly line of said Sec. 32; thence northerly and along said easterly line of Sec. 32, 1650 feet to the northeast [784—678] corner of said Sec. 32 and point of commencement, being a portion of Sec. 32, T. 31 S., R. 23 E., M. D. B. & M., and containing 100 acres more or less.

Plaintiff's Exhibit No. 47.

Agreement dated January 6, 1909, from the signers of power of attorney (Plaintiff's Exhibit 7), by L. B. McMurtry, attorney in fact, sellers, and Chanslor-Canfield Midway Oil Company, buyer, in which sellers agree to sell and buyer agrees to buy

NE.1/4 of Sec. 9, T. 32 S., R. 23 E., M. D. B. & M.,
acknowledged May 5, 1909, recorded May 5, 1909.

Plaintiff's Exhibit No. 48.

Deed dated October 26, 1909, from the signers of powers of attorney (Plaintiff's Exhibit 7) and L. B. McMurtry, by A. E. Hoepfner, attorney in fact, to Chanslor-Canfield Midway Oil Company, embracing NE.1/4 Sec. 9, T. 32 S., R. 23 E., M. D. B. & M.

Plaintiff's Exhibit No. 50.

Thirty-two receipts, each for 1000 shares of stock of the Pacific Oil Lands Company, similar to the following:

“September 14th, 1911.

“RECEIVED of L. B. McMurtry 1,000 shares of the PACIFIC OIL LANDS COMPANY in full of all claims and demands growing out of power of attorney given by me to him of date December 19, 1907.

HERBERT M. WALKER.”

Each of such receipts bears the signature of one of the signers of the powers of attorney (Plaintiff's Exhibits 4, 5, 6 and 7) and there is a receipt by each of such signers except Daniel W. Darling. The receipt for the stock issued in Darling's name reads in part: “in full of all claims and demands growing out [785—679] of power of attorney given by Daniel W. Darling to him of date December 18, 1907,” and is signed, “Elizabeth W. Darling.”

Also thirty-one checks similar on the face and back to the following:

“No. 116. New York, Sep. 26, 1910.

SECOND NATIONAL BANK

of the City of New York.

Pay to the order of Herbert M. Walker Two
Hundred and Fifty Dollars.

\$250.00/100.

F. H. SEARLS.”

(Back):

“Received from L. B. McMurtry \$250.00, in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a Power of Attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907.

HERBERT M. WALKER.”

Each of such checks is payable to and signed by one of the signers of said powers of attorney (except Daniel W. Darling). In lieu of a check payable to Darling is one payable to F. H. Searls, similar on the face to the others, but containing no receipt on the back thereof. It is endorsed: “F. H. Searls, Elizabeth W. Darling.” [786—680]

Plaintiff's Exhibit No. 51.

Lease dated January 4, 1909, from the signers of the power of attorney, Plaintiff's Exhibit 7, by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing the N. $\frac{1}{2}$ NE. $\frac{1}{4}$ Sec. 4, T. 32 S., R. 23 E. Acknowledged May 28, 1909. Recorded August 6, 1909.

Plaintiff's Exhibit No. 52.

Lease dated January 4, 1909, from the signers of the power of attorney, Plaintiff's Exhibit 4, by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing the N.1/2 NW.1/4 Sec. 4, 32 S., R. 23 E. Acknowledged May 28, 1909. Recorded August 6, 1909.

Plaintiff's Exhibit No. 53.

Deed and agreement dated February 4, 1909, from the signers of Plaintiff's Exhibits 4, 5, 6 and 7, by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing Sec. 20, T. 30 S., R. 23 E. Recites that parties of first part have heretofore and on same date conveyed the land to party of second part.

Acknowledged Feb. 10, 1909. Recorded March 2, 1909.

Plaintiff's Exhibit No. 54.

Four deeds dated Feb. 4, 1909, as follows:

1. From the signers of power of attorney, Plaintiff's Exhibit 4, to J. M. McLeod, embracing NW.1/4 Sec. 32, T. 31 S. R. 23 E.
2. From the signers of power of attorney, Plaintiff's Exhibit 5, by L. B. McMurtry, attorney in fact, to J. M. McLeod, [787—681] embracing the SE.1/4 Sec. 32, T. 31 S., R. 23 E.
3. From the signers of power of attorney, Plaintiff's Exhibit 6, by L. B. McMurtry, attorney in

fact, to J. M. McLeod, embracing SW.1/4 Sec. 32, T. 31 S., R. 23 E.

4. From the signers of power of attorney, Plaintiff's Exhibit 7, by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing NE.1/4 Sec. 32, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 55.

Deed and agreement dated January 25, 1909, from the signers of powers of attorney, Plaintiff's Exhibits 4, 5, 6, and 7, by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing Sections 22 and 26, T. 31 S., R. 23 E. Acknowledged Feb. 10, 1909.

Plaintiff's Exhibit No. 56.

Four deeds dated January 25, 1909, similar to Plaintiff's Exhibit 54, same grantors and grantees, and embracing Sections 22 and 26, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 57.

Agreement dated May 17, 1909, from the signers of the powers of attorney, Plaintiff's Exhibits 4, 5, 6, and 7, by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing Sec. 34, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 58.

Deed dated May 17, 1909, from the signers of the powers of attorney, Plaintiff's Exhibits 4, 5, 6 and 7, by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing Sec. 34, T. 31 S., R. 23 E. [788—682]

Plaintiff's Exhibit No. 59.

Agreement dated February 20, 1909, from J. M. McLeod to the Sunset Monarch Oil Company, embracing S.1/2 N.1/2 and N.1/2 S.1/2 Sec. 20, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 60.

Agreement dated December 29, 1909, from J. M. McLeod to Union Oil Company, embracing N.1/2 S.1/2 and S.1/2 N.1/2 Sec. 34, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 65.

“Law Office of
C. L. CLAFLIN
Bakersfield, Cal.

November 12, 1908.

Wilson & Wheat, Esqs.,
Hellman Bldg.,
Los Angeles, Cal.,

Dear Sirs:

No doubt you have found the contract sent you some days since. You will be able to compete with me in the line of losing papers. I am sending you the McMurtry deeds as we have no time to make copies today and never imagined that any copy would be needed. Am also sending you one copy of each of the leases and contracts, the others I am retaining here for Mr. McMurtry, as you will have no need of them. Am delivering one copy of contract with Tupman to him as well as the deeds executed by McMurtry. I find on examination of McMurtry's

power of attorney they *they* are not satisfactory in form. Will explain that matter fully when I again see you. All papers sent by Wells-Fargo Express.

Yours truly,
C. L. CLAFLIN." [789—683]

Plaintiff's Exhibit No. 66.

"Los Angeles, Cal., Nov. 14, 1908.

"C. L. Claflin, Esq.,
Bakersfield, Cal.

Dear Sir:

Yours 12th received. Also Wells Fargo package.

You speak of our 'doubtlessly finding a contract sent some days since'—didn't know one was lost. We had received the Richardson et al. agreement some days ago O. K. and still have it. Have found, however, the abstract of Section 32—Mr. Lacy had it.

Our Mr. Gordon will call upon you Monday or Tuesday and check papers up with you. Also please explain to him the trouble with McMurtry's power of attorney and kindly have defect remedied soon as possible.

Yours very truly,
WILSON, WHEAT et al.

Per W. R. W.

P. S.—We return to you herewith the Haberkern et al. deeds (4) of date Oct. 30/08, and think they should be recorded (if not already done) for the benefit of the McMurtry interests. Please see that all other papers and contracts are recorded that you think ought to be—rendering bill to us accordingly." [790—684]

DEFENDANTS' EXHIBITS.

Defendants' Exhibit "B."

"ASSOCIATED OIL COMPANY.

Carbon Copy.

Duplicate.

April 25th, 1910.

MEMO.

LANDS HELD BY McMURTRY & HOEPPNER
IN THE MIDWAY FIELD.

N.1/4	Sec. 20	31/23	160 acres.
S.1/4	" 20	"	160 "
N.1/4	" 22	"	160 "
S.1/4	" 22	"	160 "
N.1/4	" 26	"	160 "
S.1/4	" 26	"	160 "
N.1/4	" 32	"	160 "
S.1/4	" 32	"	160 "

N. 200 Acres in

Sec. 32-31/23	200	"
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Total	1480	"
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These lands are held by mineral locations which McMurtry claims to have made six years ago. The lands are protected by actual drilling operations.

McMurtry was in San Francisco April 20th. His residence is #1325 Green Street. Phone Franklin 5773.

W. A. WILLIAMS."

Defendants' Exhibit "K."

"Ratified by the Board of Directors of Asso. Oil Co. 9/6/10. G. S.

“1. WHEREAS, Herbert M. Walker, H. E. Bashore, R. B. Welch, F. H. Romaine, Jr., W. A. Keenan, C. Rupert Walker, Eugene Metz and William Mahn, hereinafter called grantors, pursuant to the provisions of Chapter VI, Title 32 of the Revised Statutes of the United States, and the local customs, laws and regulations governing the mining district known as the Midway Mining District, in the County of Kern, State of California, duly locate under said Act the Northwest Quarter (NW. $\frac{1}{4}$) of Section Thirty-two (32), Township Thirty-one (31) South, Range Twenty-three (23) East, M. D. B. & M., and that at said time the said land was open and unoccupied land and subject to location, and that oil was discovered on said property in May, 1909;

“2. AND WHEREAS, on the 1st day of January, 1909, Frank D. Taylor, Edwin L. Powell, Daniel W. Darling, J. W. Pentz, S. H. Freeman, C. W. Thorn, J. F. Harder and F. H. Searls, hereinafter called grantors, did, and they do hereby [791—685] represent that they did, duly and legally locate, pursuant to the provisions of Chapter VI, Title 32 of the Revised Statutes of the United States, and the local customs, laws and regulations governing the mining district known as the Midway Mining District, in the County of Kern, State of California, the Northeast Quarter (NE. $\frac{1}{4}$) of Section Thirty-two (32), Township Thirty-one (31) South, Range Twenty-three (23) East, M. D. B. & M.; and do hereby further represent that, subject to that certain conveyance of date May 17, 1909, by each and all of said persons hereinbefore men-

tioned, called a grant, bargain and sale deed, executed to J. M. McLeod, apparently conveying the whole of the North Half (N.1/2) of Section Thirty-two (32), Township Thirty-one (31) South, Range Twenty-three (23) East, M. D. B. & M., and subject also to that certain deed called a quit-claim deed, executed by all of said persons, dated May 17, 1909, to J. M. McLeod, purporting to convey the North Half (N.1/2) of said Section Thirty-two (32) to him, that they are the owners of all of said North Half (N.1/2) of said Section Thirty-two (32) and do represent that the said deeds were made entirely subject to that certain agreement recorded on August 6, 1909, in Book 19 of Agreements, page 93 of the records of Kern County, State of California, made and entered into by all of said persons with J. M. McLeod, in and by which the said J. M. McLeod did agree to drill for oil upon the Northeast and Northwest Quarters of said Section Thirty-two (32), and did agree that he would convey the North one hundred (100) acres of each and both of said Quarter Sections to the grantors herein named, their heirs, executors, administrators and assigns upon the discovery of oil, and when the Receiver's final receipt shall be issued on application for patent;

“3. AND WHEREAS, the said parties above named do represent that a discovery of oil was made upon the Northwest Quarter (NW.1/4) of Section Thirty-two (32) pursuant to law, in May, 1909, and that ever since they have been in possession of said property, to-wit, from the date of location; also that

they either by themselves or by and through their agents or by and through said J. M. McLeod, have diligently and continuously operated said land to the end that discovery of oil should be made upon each and both of said quarter sections; and said parties also represent that drilling for oil on said Northeast Quarter (NE.1/4) of Section Thirty-two (32) was actually in progress before the withdrawal thereof from location by the Government of the United States;

“4. AND WHEREAS, it appears from an Abstract of Title submitted, made by the Bakersfield Abstract Company, that J. M. McLeod did, on November 4, 1909, assign to 32 Oil Co., a corporation, any and all interest which he might acquire in and to the North Half (N.1/2) of Section Thirty-two (32), under and by virtue of the said agreement hereinbefore referred to, executed on May 17, 1909, wherein the grantors above named are of the one part and said McLeod is of the other part; [792—686]

“5. AND WHEREAS, L. B. McMurtry does represent that he has an interest in the said lands with the said sixteen (16) persons above mentioned (other than said J. M. McLeod and said 32 Oil Co.) and does further represent that he is the duly authorized, empowered and acting attorney in fact of each and all of said sixteen (16) persons and has the right to sell said lands and all the interest of said sixteen (16) persons therein and thereto, and has the legal right to make conveyances, and that his powers of attorney are in his possession, and that none of said powers of attorney has been revoked; and that each and all of said sixteen (16) persons are now alive;

“6. NOW, THEREFORE, in consideration of the sum of Five Thousand (\$5,000) Dollars to him, the said L. B. McMurtry, in hand paid, by W. F. Herrin, John C. Kirkpatrick, R. P. Schwerin, W. S. Porter, Rudolph Herold, Jr., O. Schribner, Paul Shoup and Frank H. Buck, hereinafter called the Herrin grantees, and by the Associated Oil Company, a corporation duly organized and existing under and by virtue of the laws of the State of California, the said L. B. McMurtry does hereby agree, simultaneously with the execution of this agreement by himself and said Associated Oil Company, to place with the Bank of California, San Francisco, in escrow, conveyances executed by himself as the attorney in fact of each and all of said sixteen (16) persons, separately conveying out of said sixteen (16) persons to the said W. F. Herrin, John C. Kirkpatrick, R. P. Schwerin, W. S. Porter, Rudolph Herold, Jr., O. Schribner, Paul Shoup and Frank H. Buck, individually, the interests respectively of said sixteen (16) persons, as separate conveyances, in and to the following described property, to-wit:

“7. The North One Hundred (100) acres of the Northeast Quarter (NE. $\frac{1}{4}$) of said Section Thirty-two (32) and the North One Hundred (100) acres of the Northwest Quarter (NW. $\frac{1}{4}$) of said Section Thirty-two (32), save and except that portion of said North One Hundred (100) acres of said Northwest Quarter (NW. $\frac{1}{4}$) commencing at the northwest corner of the Northwest Quarter (NW. $\frac{1}{4}$) of said Section Thirty-two (32), and running thence at a right angle Southerly sixteen hundred and fifty

(1650) feet; thence at a right angle Easterly ten hundred and fifty-six (1056) feet; thence at a right angle Northerly sixteen hundred and fifty (1650) feet to the Northerly line of Section Thirty-two (32); thence at a right angle Westerly along said Northerly line of Section Thirty-two (32) ten hundred and fifty-six (1056) feet, containing approximately forty (40) acres of land, more or less.

“8. And the said L. B. McMurtry and the said sixteen (16) other persons hereunto signing, do hereby agree to obtain conveyances to the said described property within thirty (30) days from this date from J. M. McLeod and from the 32 Oil Co., and the said L. B. McMurtry does hereby agree to himself deposit his own deed and all of said conveyances conveying to the said W. F. Herrin, John C. Kirkpatrick, R. P. Schwerin, W. S. Porter, Rudolph Herold, Jr., O. Scribner, Paul Schoup and Frank H. Buck, the entire right, title and [793—687] interest of all of said parties in and to the said properties hereinbefore mentioned; and does hereby further covenant, promise and agree that he will forthwith proceed to, and will obtain from said sixteen (16) persons, in proper form to be recorded, pursuant to the laws of the State of California, an acknowledgment that at this date his said powers of attorney are in full force and effect, and also a ratification and a confirmation by each and all of said persons of the execution of said deeds, and each and all of them, hereinbefore mentioned.

“9. It is hereby agreed between said Associated Oil Company, and the said sixteen (16) persons, and

the said L. B. McMurtry, that the purchase price of the said one hundred and sixty (160) acres in the North half (N.1/2) of Section Thirty-two (32) shall be the sum of Four Hundred and Thirty Thousand (\$430,000) Dollars; One Hundred and Seventy-five Thousand (\$175,000) Dollars thereof to be paid in cash, and the balance, namely, Two Hundred and Fifty-five Thousand (\$255,000) Dollars, together with interest thereon from the date hereof at five (5 pct.) per cent. per annum to be paid in production, said cash and payment in production to be paid as follows: As to the cash payment, immediately upon the deeds being deposited in escrow, the Associated Oil Company will deposit with the said Bank of California, San Francisco, the sum of Eighty-five Thousand (\$85,000) Dollars, which said sum of Eighty-five Thousand (\$85,000) Dollars, together with the said Five Thousand (\$5,000) Dollars paid upon the signing of these presents, shall be applied upon the purchase price of said tract of land, and as a part thereof; the said Eighty-five Thousand (\$85,000) Dollars to remain in escrow until the said L. B. McMurtry shall have procured and delivered according to the terms and conditions hereof, to the said grantees hereinbefore mentioned, or to the Associated Oil Company, their agent, satisfactory confirmation of the deeds by the said grantors, as is hereinafter provided; the said Eighty-five Thousand (\$85,000) Dollars to be drawn down by the said Associated Oil Company and said Five Thousand (\$5,000) Dollars to be returned to it at the expiration of ninety (90) days from this date, at its option, provided said

confirmation hereinbefore referred to shall not have been obtained. And in addition thereto, said Associated Oil Company does agree to pay, for and on behalf of said Herrin grantees, the additional sum of Eighty-five Thousand (\$85,000) Dollars in six months from this date, if said confirmations shall have been obtained, with interest thereon at the rate of five (5) per cent. per annum from the date hereof. As to payments in production, the Associated Oil Company does agree to pay the additional sum of Two Hundred and Fifty-five Thousand (\$255,000) Dollars, the balance of the purchase price of said property, in oil and gas produced, in the manner hereinafter provided.

“10. WHEREAS, the said Associated Oil Company, as the agent of said Herrin grantees, has made and entered into contracts with thirty-two (32) locators of and concerning the North Half (N.1/2) of the North Half (N.1/2) of Section Thirty-four (34), Township Thirty-one (31) South, Range Twenty-three (23) East; also of and concerning the South Half (S.1/2) the South Half (S.1/2) of Section Thirty-four (34), Township Thirty-one (31) [794—688] South, Range Twenty-three (23) East, which may or may not be included in this transaction, at the option of L. B. McMurtry; also of and concerning a tract known as the North Half (N.1/2) of the North Half (N.1/2) of Section Twenty-six (26), Township Thirty-one (31) South, Range Twenty-three (23) East; also of and concerning the South Half (S.1/2) of the South Half (S.1/2) of Section Twenty-six (26), Township Thirty-one

(31) South, Range Twenty-three (23) East; also of and concerning the North Half (N.1/2) of the North Half (N.1/2) of Section Twenty-two (22), Township Thirty-one (31) South, Range Twenty-three (23) East; also of and concerning the South Half (S.1/2) of the South Half (S.1/2) of Section Twenty-two (22), Township Thirty-one (31) South, Range Twenty-three (23) East; also of and concerning the North Half (N.1/2) of the North Half (N.1/2.) of Section Twenty (20), Township Thirty-one (31) South, Range Twenty-three (23) East; also of and concerning the South Half (S.1/2) of the South Half (S.1/2) of Section Twenty (20), Township Thirty-one (31) South, Range Twenty-three (23) East; each of said tracts containing one hundred and sixty (160) acres more or less of land, the said contracts being made with the locators thereof by and through L. B. McMurtry, representing himself as their agent and duly authorized attorney in fact, and the purchase price being Fifteen Hundred, Ninety-three and 75/100 (\$1593.75) Dollars per acre, payable from proceeds of oil and gas produced from said tracts of land respectively;

* * * * *

“16. In the event that said Associated Oil Company or said Herrin grantees shall be dispossessed of said one hundred and sixty (160) acres tract of land by the United States Government, or any other claimant, said Associated Oil Company and Herrin grantees shall not in any wise be responsible for the then unpaid purchase price of said property, or any loss or damage sustained by the grantors above

named, L. B. McMurtry, or any other person, and may remove any and all improvements therefrom; and such rights as may herein be conveyed to the Herrin grantees and the Associated Oil Company by the various persons hereinbefore mentioned shall then revert to them and each of them.

* * * * *

“19. It is also understood and agreed hereby that said grantors herein, or their duly authorized agent, may at any and all reasonable times have access to said lands and the improvements thereon, for the purpose of inspecting operations thereon, and that L. B. McMurtry shall receive the purchase price herein agreed to be paid.

“20. It is further understood and agreed that the Five Thousand (\$5,000) Dollars advanced by the Associated Oil Company to said L. B. McMurtry is to be a lien upon all the interests of said L. B. McMurtry in and to said land.

21. The said Associated Oil Company and said Herrin grantees agree to hold the grantors harmless from all loss or damage by reason of the filing of any lien upon any of said tracts of land, or any part thereof, by any laborer, contractor, or materialman, for work done or material furnished to said [795—689] Associated Oil Company or to said Herrin grantees, and to pay all costs, including the attorney's fees of the grantors, expended in defending or protecting said property from any such claim or lien and clearing the title thereto. And the said Associated Oil Company and the said Herrin grantees agree to use and employ at all times all diligence in defend-

ing and protecting the title and right to said premises hereby conveyed by said grantors, ejecting trespassers therefrom, and in maintaining the title of the said grantors to each of said tracts of land, all at its own expense, and the said Associated Oil Company and the said Herrin grantees hereby agree to do, or have done, at their own expense the annual assessment work required by the United States statutes; upon each of the aforesaid tracts of land until patent shall be issued, or until this agreement shall terminate, and to record the necessary proofs of labor therefor prior to December 15 of each year until patent shall have issued.

* * * * *

“IN WITNESS WHEREOF the said Associated Oil Company, by its proper officers thereunto duly authorized, have caused these presents to be executed by causing its corporate name to be signed and its corporate seal to be attached thereto; and the other parties hereto have hereunto set their hands this fourth day of August, 1910.

“ASSOCIATED OIL COMPANY,

(Corporate Seal.)

(Signatures): “By PAUL SHOUP,

“Vice-President.

“By O. SCRIBNER,

“Secretary.

(Signatures): “WM. F. HERRIN.

“W. S. PORTER.

“JOHN C. KIRKPATRICK.

“FRANK H. BUCK.

“O. SCRIBNER.

“RUDOLPH HEROLD, JR.

“R. P. SCHWERIN.

“PAUL SHOUP.

“L. B. McMURTRY.”

And the thirty-two signers of powers of attorney, Plaintiff's Exhibits 4, 5, 6 and 7, by L. B. McMurtry, attorney in fact.

Acknowledged September 3 and 4, 1910. [796—690]

Defendants' Exhibit "L."

“San Francisco, Cal., June 22, 1911.

“Associated Oil Company,

San Francisco, California.

Gentlemen:

Out of the balance of the \$175,000 cash payment due me under that certain agreement of date the 4th day of August, 1910, wherein and whereby Herbert M. Walker and fifteen other persons therein named as grantors, through myself as their attorney-in-fact, sold unto W. F. Herrin and seven other persons in said agreement named as grantees, the 160 acres of land in said agreement described, situated in the North half of Section 32, Township 31 South, Range 23 East, M. D. B. & M., you are hereby authorized to retain the sum of \$2500 until the 10th day of December, 1911, at which time the Decree of Final Distribution heretofore entered in that certain probate proceedings pending in the Superior Court of the County of Kern, State of California, and entitled ‘In the Matter of the Estate of Daniel W. Darling, Deceased’ and entered upon the records of said Court upon the 6th day of June, 1911, shall become final, if

no claim is made against same by persons hereinafter named. If claim be made said sum to be used by you in liquidating same and balance, if any, unused, to be paid to me, when settlement of claims is made. And in consideration of your paying to me the balance of said cash payment, together with the accrued interest thereon as of the date hereof, I hereby agree to hold the grantees named in said agreement of August 4th, 1910, hereinbefore referred to harmless from all claims and demands of every kind which Roger C. Darling or Christine Darling, or either of them, may make against the said grantees in said agreement mentioned growing out of their claim as legatees under the last will and testament of the said Daniel W. Darling, deceased.

IN WITNESS WHEREOF, I have hereunto set my hand this 22d day of June, 1911.

(Signed) L. B. McMURTRY."

Defendants' Exhibit "O."

Deed dated July 30, 1910, L. B. McMurtry to W. F. Herrin, John C. Kirkpatrick, R. P. Schwerin, W. S. Porter, Rudolph Herold, Jr., O. Scribner, Paul Shoup and Frank H. Buck, embracing the North 100 acres of the NE. $\frac{1}{4}$ of Sec. 32, and the North 100 acres of the NW. $\frac{1}{4}$ of Sec. 32, save and except that portion of said North 100 acres of said NW. $\frac{1}{4}$ commencing at the northwest corner of the NW. $\frac{1}{4}$ of [797—691] of said Sec. 32, and running thence at a right angle southerly 1650 feet; thence at a right angle easterly 1056 feet; thence at a right angle northerly 1650 feet to the northerly line of said Section 32;

thence at a right angle westerly along said northerly line of said Sec. 32, 1056 feet, containing approximately 40 acres of land, more or less. Said land being situate in T. 31 S., R. 23 E., M. D. B. & M.

Acknowledged August 4, 1910.

Defendants' Exhibit "X."

Four deeds, dated Feb. 1, 1909, and acknowledged Feb. 10, 1909, to H. C. Stratton, as follows:

1. From Herbert M. Walker, et al. (Plaintiff's Exhibit 4), by L. B. McMurtry, attorney in fact, embracing NW. $\frac{1}{4}$ Sec. 28, 31-23.

2. From Samuel R. Banks, et al. (Plaintiff's Exhibit 5), by L. B. McMurtry, attorney in fact, embracing SE. $\frac{1}{4}$ Sec. 28, 31-23.

3. From Francis E. Pratt, et al. (Plaintiff's Exhibit 6), by L. B. McMurtry, attorney in fact, embracing SW. $\frac{1}{4}$ Sec. 28, 31-23.

4. From Frank D. Taylor, et al. (Plaintiff's Exhibit 7), by L. B. McMurtry, attorney in fact, embracing NE. $\frac{1}{4}$ Sec. 28, 31-23.

Defendants' Exhibits "F-1" to "M-1."

Deeds and stipulation showing conveyance by each of the 32 signers of Plaintiff's Exhibit 4, 5, 6 and 7 (excepting Darling), by L. B. McMurtry, attorney in fact, by separate deeds, dated July 10, and acknowledged August 4, 1910, of his interest in each quarter section of land affected by the contract of August 4, 1910 (Defendants' Exhibit "K"), to one of the persons designated in said contract as "Herrin Grantees," so that each of said "Herrin Grantees" thus [798-692] acquired the interest of one of said

locators in each quarter-section of land affected by said contract.

Defendants' Exhibit "O-1."

"Douglas 314.

WILLIAM T. GARRETT and DOUGLAS S.
WATSON.

First National Bank Building.
San Francisco.

December 19th, 1910.

Mr. O. Scribner,
Ass't Gen'l Manager,
Associated Oil Company,
San Francisco, California.

Dear Sir:—

On August 4, 1910, I entered into an agreement with the Associated Oil Company and the Herrin Grantees whereby I agreed to sell 160 acres in Section 32 and 320 acres in Sections 20, 22, 26 and 34 for \$2,470,000.00—\$5,000.00 Cash, which was paid me, \$85,000.00 when I should have obtained confirmation of my acts under powers of attorney, and, \$85,000.00 on February 1, 1911, the balance of the purchase price to be paid in production in accordance with the terms of the several agreements.

On September 20, 1910 I received the sum of \$25,000.00, at which time in order to protect your Company I signed a note and gave a mortgage covering the properties sold you under agreement, so that there remains due of the first payment of \$85,000.00, \$60,000.00 which is in the form of a check payable to my order and now held by the Bank of California.

I have obtained 31 confirmations in accordance with our agreement, which have been deposited with you, and a quitclaim deed from Elizabeth Darling widow of Daniel W. Darling, also Daniel W. Darling's will which my attorney, Mr. W. S. Brann has filed in the Probate Division of the Superior Court of Kern County, California. Letters of administration will issue to Fred B. Hughes, my nominee and within four months we will be able to have a partial distribution of the Darling Estate to me so that any title which might have vested in Darling will come to me, and the deeds already deposited with the Bank of California and signed by me to the Herrin Grantees, will pass the title.

Upon the payment to me of the \$60,000.00 now held by the Bank of California and the cancellation of the note and mortgage given you as security for the \$25,000.00 advanced, I agree to allow the payment due February 1, 1911 to ride until I receive a decree in the Estate of Daniel W. Darling, or a judgment against it.

Yours truly,

(Signed) L. B. McMURTRY."

P. S.—Mr. Watson informs me that you would like to have me obtain a grant, bargain and sale deed from Elizabeth Darling covering the property belonging to the Associated Oil Company. I have already requested my Attorney to obtain the deed for you, which should come to hand in due course.

(Signed) L. B. McMURTRY," [799—693]

Certificate of Judge to Statement of Evidence.

It appearing that the foregoing statement of the evidence to be included in the record on appeal to the Circuit Court of Appeals for the Ninth Circuit is full, true, complete, and properly prepared pursuant to stipulation filed herein this day, the same is hereby approved.

Dated April 22, 1920.

BLED SOE.

Judge. [800—694]

In the District Court of the United States, for the
Southern District of California, Northern Division,
Ninth Circuit.

No. B-10—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CALIFORNIA MIDWAY OIL COMPANY, et als.,
Defendants.

Praecipe for Transcript on Appeal.

To the Clerk of the Above-entitled Court:

You will please prepare and duly authenticate a transcript of the following portions of the record in the above-entitled cause for appeal to the United States Circuit Court of Appeals for the Ninth Circuit:

1. Amended bill of complaint.
2. Answer of defendant California Midway Oil Company.

3. Answer of defendant Columbus Midway Oil Company.
4. Answer of defendants Thirty-two Oil Company and J. M. McLeod.
5. Answer of defendant L. B. McMurtry.
6. Decree of dismissal.
7. Petition for appeal.
8. Assignment of errors.
9. Order allowing appeal.
10. Citation on appeal.
11. Stipulation re statement of evidence.
12. Statement of evidence.
13. Praeceptum.

HENRY F. MAY,

E. B. LACY,

Special Assistants to the Attorney General,
Solicitors for Plaintiff. [801—802]

Service of the foregoing praecipe is admitted, this
4th day of April, 1921.

HENRY ACH and

EDMUND TAUSZKY,

Solicitors for Defendants, Associated Oil Company.

ROBT. M. PEASE,

Solicitors for Defendants, J. M. McLeod, and Apr.

15, 1921, Thirty-two Oil Company.

JORDAN & BRANN,

Solicitor for Defendant, L. B. McMurtry.

GEO. E. WHITAKER,

Solicitor for Defendant, California Midway Oil Co.

PILLSBURY, MADISON & SUTRO,
Solicitors for Defendants, Standard Oil Company.
U. T. CLOTFELTER,
JORDAN & BRANN,
Solicitors for Defendant, Columbus Midway Oil Co.
[803]

[Endorsed]: No. B-10. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. United States of America vs. California Midway Oil Company, et als. Praecipe for Transcript on Appeal. Filed Apr. 22, 1921. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. [804]

IN EQUITY—No. B-10.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

CALIFORNIA MIDWAY OIL COMPANY, ASSOCIATED OIL COMPANY, COLUMBUS MIDWAY OIL COMPANY, 32 OIL COMPANY, L. B. McMURTRY, J. M. McLEOD, and STANDARD OIL COMPANY,
Defendants.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, CHAS. N. WILLIAMS, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing eight hundred and four (804) typewritten pages, numbered from 1 to 804, inclu-

sive, and comprised in one volume to be a full, true and correct copy of the amended bill of complaint, answer of defendant California Midway Oil Company, answer of defendants 32 Oil Company and J. M. McLeod, answer of defendant L. B. McMurtry, decree of dismissal, petition for appeal, assignment of errors, order allowing appeal, stipulation re statement of evidence, statement of evidence and praecipe for transcript in the above and therein entitled cause, and that the same together constitute the record in said cause, as specified in the said praecipe, filed in my office on behalf of the United States of America, plaintiff and appellant, by its attorneys of record, with the exception of the answer of defendant, Columbus Midway Oil Company, which is specified in said praecipe, but which was not filed in the above-entitled action. I further certify that the original citation on appeal is hereto attached and made a part of said record.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Northern Division, this 30th day of April, in the year of our Lord one thousand nine hundred and twenty-one, and of our Independence the one hundred and forty-fifth.

[Seal] CHAS. N. WILLIAMS,
Clerk of the District Court of the United States of
America, in and for the Southern District of
California.

By R. S. Zimmerman,
Deputy Clerk.

[Endorsed]: No. 3682. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Appellant, vs. California Midway Oil Company, Associated Oil Company, Columbus Midway Oil Company, 32 Oil Company, L. B. McMurtry, J. M. McLeod, and Standard Oil Company, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Northern Division.

Filed May 2, 1921.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the District Court of the United States for the
Southern District of California, Northern Division,
Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

CALIFORNIA MIDWAY OIL COMPANY et
al., Being Numbered in B-10 in the District
Court,

Appellees.

**Order Enlarging Time to and Including March 1,
1920, to File Record and Docket Cause.**

This cause coming on to be heard on the application of United States of America, appellant, for an

enlargement of time in which to file in the Circuit Court of Appeals for the Ninth Circuit the record and docket therein the above-entitled cause up to and including the 1st day of March, 1920,—

IT IS ORDERED that the time in which to file the record and docket the above-entitled cause in the Circuit Court of Appeals for the Ninth Circuit be, and the same hereby is, enlarged to the 1st day of March, 1920.

Dated this 8th day of January, 1920.

R. S. BEAN,
District Judge.

[Endorsed]: No. 3682. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. United States of America, Appellant, vs. California Midway Oil Company et al., Appellees. Order Filed Jan. 8, 1920. F. D. Monckton, Clerk. Refiled May 2, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

CALIFORNIA MIDWAY OIL COMPANY et
al., Being Numbered in B-10 in the District
Court,

Appellees.

Order Enlarging Time of Return Day of Citation and Filing of Record and Docketing of Cause to and Including June 1, 1920.

This cause coming on to be heard upon the application of the United States of America, appellant, for an enlargement of the return of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and the time in which to file the transcript of the record and docket the above-entitled cause up to and including the 1st day of June, 1920, and good cause being shown,—

IT IS HEREBY ORDERED that the return day of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, enlarged and extended up to and including the 1st day of June, 1920, and that the appellant may have to and including the 1st day of June, 1920, in which to file in the office of the Clerk of this Court the transcript of the record on appeal and docket said cause in this court.

Dated February 24, 1920.

WM. H. HUNT,
Circuit Judge.

[Endorsed]: No. 3682. In the Circuit Court of Appeals of the United States for the Ninth Circuit. United States of America, Appellant, vs. California Midway Oil Co. et al., Appellees. Order Enlarging Time of Return Day of Citation and Filing of Record and Docketing of Cause. Filed Feb. 26, 1920. F. D. Monckton, Clerk. Refiled May 2, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

UNITED STATES OF AMERICA,

Plaintiff and Appellant,

vs.

CALIFORNIA MIDWAY OIL COMPANY, AS-
SOCIATED OIL COMPANY, COLUMBUS
MIDWAY OIL COMPANY, 32 OIL COM-
PANY, L. B. McMURTRY, J. M. McLEOD,
and STANDARD OIL COMPANY,

Defendants and Appellees.

**Stipulation Enlarging Time of Return Day of Cita-
tion and Filing of Record and Docketing of
Cause to and Including August 1, 1920.**

IT IS HEREBY STIPULATED by and between
the parties in the above-entitled cause, which is in
Equity B-10 in the District Court of the United
States for the Southern District of California,
Northern Division, that the plaintiff and appellant
may have up to and including the 1st day of August,
1920, within which to file and docket said cause in the
United States Circuit Court of Appeals for the Ninth
Circuit, and that the return day of the citation on the
appeal to the United States Circuit Court of Appeals
for the Ninth Circuit may be enlarged and extended
up to and including 1st day of August, 1920.

Dated May 17th, 1920.

HENRY F. MAY,

E. B. LACY,

C. D. HAMEL,

Special Assistants to the Attorney General,

Solicitors for Plaintiff and Appellant.

HENRY ACH,

EDMUND TAUSZKY,

Solicitors for Defendant and Appellee Associated Oil
Company.

R. M. PEASE,

Solicitor for Defendants and Appellees J. M. McLeod
and 32 Oil Company.

JORDAN & BRANN,

Solicitors for Defendant and Appellee L. B. McMurry.

GEORGE E. WHITAKER,

Solicitor for Defendant and Appellee California
Midway Oil Company.

PILLSBURY, MADISON & SUTRO,

Solicitors for Defendant and Appellee Standard Oil
Company.

U. T. CLOTFELTER,

Solicitor for Defendant and Appellee Columbus
Midway Oil Company.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

UNITED STATES OF AMERICA,

Plaintiff and Appellant,

vs.

CALIFORNIA MIDWAY OIL COMPANY, AS-
SOCIATED OIL COMPANY, COLUMBUS
MIDWAY OIL COMPANY, 32 OIL COM-
PANY, L. B. McMURTRY, J. M. McLEOD,
and STANDARD OIL COMPANY,

Defendants and Appellees.

**Order Enlarging Time of Return Day of Citation and
Filing of Record and Docketing of Cause to and
Including August 1, 1920.**

This cause coming on to be heard upon the application of the plaintiff and appellant for an enlargement of the return day of the citation on appeal to the United States Circuit Court of Appeals and for an enlargement of the time in which the transcript of the record on appeal may be filed, and the cause docketed in the United States Circuit Court of Appeals for the Ninth Circuit, and it appearing that a stipulation by and between the solicitors for the respective parties hereto has been filed, providing that such time, may be extended up to and including the 1st day of August, 1920,—

IT IS HEREBY ORDERED that the return day of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby enlarged and extended up to and

including the 1st day of August, 1920, and that appellant may have to and including the 1st day of August, 1920, in which to file in the office of the Clerk of this court its transcript of the record on appeal and to docket said cause in this court.

Dated May 17, A. D. 1920.

W. W. MORROW,
Circuit Judge.

[Endorsed]: No. 3682. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Plaintiff and Appellant, vs. California Midway Oil Company, et al., Defendants and Appellees. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including August 1st, 1920 to File Record and Docket Cause. Filed May 17, 1920. F. D. Monckton, Clerk. Refiled May 2, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

UNITED STATES OF AMERICA,
Plaintiff and Appellant,
vs.

CALIFORNIA MIDWAY OIL COMPANY, AS-
SOCIATED OIL COMPANY, COLUM-
BUS MIDWAY OIL COMPANY, 32 OIL
COMPANY, L. B. McMURTRY, J. M. Mc-
LEOD, and STANDARD OIL COMPANY,
Defendants and Appellees.

Stipulation Enlarging Time of Return Day of Citation and Filing of Record and Docketing of Cause to and Including November 1, 1920.

IT IS HEREBY STIPULATED by and between the parties in the above-entitled cause, which is in Equity B-10 in the District Court of the United States for the Southern District of California, Northern Division, that the plaintiff and appellant may have up to and including the 1st day of November, 1920, within which to prepare the statement of evidence and to file and docket said cause in the United States Circuit Court of Appeals for the Ninth Circuit, and that the return day of the citation on the appeal to the United States Circuit Court of Appeals for the Ninth Circuit may be enlarged and extended up to and including said 1st day of November, 1920.

Dated July 28th, 1920.

HENRY F. MAY,

C. D. HAMEL,

E. B. LACY,

Special Assistants to the Attorney General,
Solicitors for Plaintiff and Appellant.

HENRY ACH and

EDMUND TAUSZKY,

Solicitors for Defendant and Appellee Associated
Oil Company.

R. H. PEASE,

Solicitor for Defendants and Appellees J. M. Mc-
Leod and 32 Oil Company.

JORDAN & BRANN,

Solicitor for Defendant and Appellee L. B. McMurtry.

GEORGE E. WHITAKER,

Solicitor for Defendant and Appellee California Midway Oil Company.

PILLSBURY, MADISON & SUTRO,

Solicitors for Defendant and Appellee Standard Oil Company.

U. T. CLOTFELTER,

Solicitor for Defendant and Appellee Columbus Midway Oil Company.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

UNITED STATES OF AMERICA,

Plaintiff and Appellant,

vs.

CALIFORNIA MIDWAY OIL COMPANY, ASSOCIATED OIL COMPANY, COLUMBUS MIDWAY OIL COMPANY, 32 OIL COMPANY, L. B. McMURTRY, J. M. McLEOD, and STANDARD OIL COMPANY,
Defendants and Appellees.

**Order Enlarging Time of Return Day of Citation
and Filing of Record and Docketing of Cause to
and Including November 1, 1920.**

This cause coming on to be heard upon the application of the plaintiff and appellant for an enlargement of the return day of the citation on appeal to the United States Circuit Court of Appeals and for

an enlargement of the time in which the transcript of the record on appeal may be filed, and the cause docketed in the United States Circuit Court of Appeals for the Ninth Circuit, and it appearing that a stipulation by and between the solicitors for the respective parties hereto has been filed, providing that such time may be extended up to and including the 1st day of November, 1920,—

IT IS HEREBY ORDERED that the return day of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby enlarged and extended up to and including to 1st day of November, 1920, and that appellant may have to and including the 1st day of November, 1920, in which to file in the office of the Clerk of this court its transcript of the record on appeal and to docket said cause in this court.

Dated July 28, A. D. 1920.

W. H. HUNT,
Circuit Judge.

[Endorsed]: No. 3682. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Plaintiff and Appellant, vs. California Midway Oil Company et al., Defendants and Appellees. Stipulation and Order Enlarging Time of Return Day of Citation and Filing of Record and Docketing of Cause. Filed Jul. 28, 1920. F. D. Monckton, Clerk. Refiled May 2, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

UNITED STATES OF AMERICA,
Plaintiff and Appellant,
vs.

CALIFORNIA MIDWAY OIL COMPANY, AS-
SOCIATED OIL COMPANY, COLUM-
BUS MIDWAY OIL COMPANY, 32 OIL
COMPANY, L. B. McMURTRY, J. M. Mc-
LEOD, and STANDARD OIL COMPANY,
Defendants and Appellees.

**Stipulation Enlarging Time of Return Day of Cita-
tion and Filing of Record and Docketing of
Cause to and Including February 1, 1921.**

IT IS HEREBY STIPULATED by and be-
tween the parties in the above-entitled cause, which
is in Equity B-10 in the District Court of the United
States for the Southern District of California,
Northern Division, that the plaintiff and appellant
may have up to including the 1st day of February,
1921, within which to prepare the statement of evi-
dence and to file and docket said cause in the United
States Circuit Court of Appeals for the Ninth Cir-
cuit, and that the return day of the citation on the
appeal to the United States Circuit Court of Ap-
peals for the Ninth Circuit may be enlarged and ex-
tended up to and including said 1st day of February,
1921.

Dated October 25th, 1920.

HENRY F. MAY,

C. D. HAMEL,

E. B. LACY,

Special Assistants to the Attorney General,

Solicitors for Plaintiff and Appellant.

HENRY ACH and

EDMUND TAUSZKY,

Solicitors for Defendant and Appellee Associated
Oil Company.

R. M. PEASE,

Solicitor for Defendants and Appellees J. M. Mc-
Leod and 32 Oil Company.

JORDAN & BRANN,

Solicitor for Defendant and Appellee L. B. Mc-
Murtry.

GEORGE E. WHITAKER,

Solicitor for Defendant and Appellee California
Midway Oil Company.

PILLSBURY, MADISON & SUTRO,

Solicitors for Defendant and Appellee Standard
Oil Company.

U. T. CLOTFELTER,

By JORDAN & BRANN,

Solicitor for Defendant and Appellee Columbus Mid-
way Oil Company.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

UNITED STATES OF AMERICA,
Plaintiff and Appellant,
vs.

CALIFORNIA MIDWAY OIL COMPANY, AS-
SOCIATED OIL COMPANY, COLUM-
BUS MIDWAY OIL COMPANY, 32 OIL
COMPANY, L. B. McMURTRY, J. M. Mc-
LEOD, and STANDARD OIL COMPANY,
Defendants and Appellees.

**Order Enlarging Time of Return Day of Citation
and Filing of Record and Docketing of Cause to
and Including February 1, 1921.**

This cause coming on to be heard upon the appli-
cation of the plaintiff and appellant for an enlarge-
ment of the return day of the citation on appeal to
the United States Circuit Court of Appeals and for
an enlargement of the time in which the transcript
of the record on appeal may be filed, and the cause
docketed in the United States Circuit Court of Ap-
peals for the Ninth Circuit, and it appearing that a
stipulation by and between the solicitors for the re-
spective parties hereto has been filed, providing
that such time may be extended up to and including
the 1st day of February, 1921,—

IT IS HEREBY ORDERED that the return day
of the citation on appeal to the United States Cir-
cuit Court of Appeals for the Ninth Circuit be and
the same is hereby enlarged and extended up to and

including the 1st day of February, 1921, and that appellant may have to and including the 1st day of February, 1921, in which to file in the office of the Clerk of this court its transcript of the record on appeal and to docket said cause in this court.

Dated October 26, A. D. 1920.

W. H. HUNT,
Circuit Judge.

[Endorsed]: No. 3682. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Plaintiff and Appellant, vs. California Midway Oil Company et al., Defendants and Appellees. Stipulation Enlarging Time of Return Day of Citation and Filing of Record and Docketing of Cause, and Order. Filed Oct. 26, 1920. F. D. Monckton, Clerk. Refiled May 2, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

UNITED STATES OF AMERICA,
Plaintiff and Appellant,
vs.

CALIFORNIA MIDWAY OIL COMPANY, AS-
SOCIATED OIL COMPANY, COLUMBUS
MIDWAY OIL COMPANY, THIRTY-
TWO OIL COMPANY, L. B. McMURTRY,
J. M. McLEOD, and STANDARD OIL
COMPANY,
Defendants and Appellees.

Stipulation Enlarging Time of Return Day of Citation and Filing of Record and Docketing of Cause to and Including May 1, 1921.

IT IS HEREBY STIPULATED by and between the parties to the above-entitled cause, which is in Equity B-10 in the District Court of the United States for the Southern District of California, Northern Division, that the plaintiff and appellant may have up to and including the 1st day of May-1921, within which to prepare the statement of evidence and to file and docket said cause in the United States Circuit Court of Appeals for the Ninth Circuit, and that the return day of the citation on the appeal to the United States Circuit Court of Appeals for the Ninth Circuit may be enlarged and extended up to and including said 1st day of May, 1921.

Dated January 25, 1921.

HENRY F. MAY,
C. D. HAMEL,
E. B. LACY,

Special Assistants to the Attorney General,
Solicitors for Plaintiff and Appellant.

HENRY ACH and
EDMUND TAUSZKY,

Solicitors for Defendant and Appellee Associated
Oil Company.

R. M. PEASE,
Solicitor for Defendants and Appellees J. M. Mc-
Leod and Thirty-two Oil Company.

JORDAN & BRANN,
Solicitor for Defendant and Appellee L. B. Mc-
Murtry.

GEO. E. WHITAKER,

Solicitor for Defendant and Appellee California
Midway Oil Company.

PILLSBURY, MADISON & SURTO,

Solicitors for Defendant and Appellee Standard Oil
Company.

U. T. CLOTFELTER,

Solicitor for Defendant and Appellee Columbus
Midway Oil Company.

[Endorsed]: No. 3682. In the Circuit Court of
the United States for the Ninth Circuit. United
States of America vs. California Midway Oil Com-
pany et als. Stipulation Enlarging Time of Return
Day of Citation and Filing of Record and Docket-
ing of Cause. Filed Jan. 25, 1921. F. D. Monckton,
Clerk. Refiled May 2, 1921. F. D. Monckton,
Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

UNITED STATES OF AMERICA,

Plaintiff and Appellant,

vs.

CALIFORNIA MIDWAY OIL COMPANY, AS-
SOCIATED OIL COMPANY, COLUMBUS
MIDWAY OIL COMPANY, THIRTY-
TWO OIL COMPANY, L. B. McMURTRY,
J. M. McLEOD, and STANDARD OIL
COMPANY,

Defendants and Appellees.

**Order Enlarging Time of Return Day of Citation
and Filing of Record and Docketing of Cause to
and Including May 1, 1921.**

This cause coming on to be heard upon the application of the plaintiff and appellant for an enlargement of the return day of the citation on appeal to the United States Circuit Court of Appeals and for an enlargement of the time in which the transcript of the record on appeal may be filed, and the cause docketed in the United States Circuit Court of Appeals for the Ninth Circuit, and it appearing that a stipulation by and between the solicitors for the respective parties hereto has been filed, providing that such time may be executed up to and including the 1st day of May, 1921.

IT IS HEREBY ORDERED that the return day of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby enlarged and extended up to and including the 1st day of May, 1921, and that appellant may have to and including the 1st day of May, 1921, in which to file in the office of the clerk of this Court its transcript of the record on appeal and to docket said cause in this court.

Dated January 25, 1921.

W. H. HUNT,
Circuit Judge.

[Endorsed]: No. 3682. In the Circuit Court of the United States for the Ninth Circuit. United States of America vs. California Midway Oil Company et als. Order Enlarging Time of Return Day

of Citation and Filing of Record and Docketing of Cause. Filed Jan. 25, 1921. F. D. Monckton, Clerk. Refiled May 2, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

UNITED STATES OF AMERICA,
Plaintiff and Appellant,
vs.

CALIFORNIA MIDWAY OIL COMPANY, AS-
SOCIATED OIL COMPANY, COLUMBUS
MIDWAY OIL COMPANY, THIRTY-
TWO OIL COMPANY, L. B. McMURTRY,
J. M. McLEOD, and STANDARD OIL
COMPANY,

Defendants and Appellees.

**Order Enlarging Time of Return Day of Citation
and Filing of Record and Docketing of Cause to
and Including June 1, 1921.**

This cause coming on to be heard upon the application of the plaintiff and appellant for an enlargement of the return day of the citation on appeal to the United States Circuit Court of Appeals and for an enlargement of the time in which the transcript of the record on appeal may be filed, and the cause docketed in the United States Circuit Court of Appeals for the Ninth Circuit, and good cause therefor being shown,—

IT IS HEREBY ORDERED that the return day of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit be and

the same is hereby enlarged and extended up to and including the 1st day of June, 1921, in which to file in the office of the Clerk of this Court its transcript of the record on appeal and to docket said cause in this Court.

Dated April 26th, 1921.

WM. H. HUNT,
Circuit Judge.

[Endorsed]: No. 3682. In the Circuit Court of the United States for the Ninth Circuit. United States of America vs. California Midway Oil Company et als. Order Enlarging Time of Return Day of Citation and Filing of Record and Docketing of Cause. Filed Apr. 26, 1921. F. D. Monckton, Clerk. Refiled May 2, 1921. F. G. Monckton, Clerk.

No. 3682

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

VS.

CALIFORNIA MIDWAY OIL COM-
PANY, ASSOCIATED OIL COM-
PANY, COLUMBUS MIDWAY OIL
COMPANY, THIRTY-TWO OIL COM-
PANY, L. B. McMURTRY, J. M.
McLEOD and STANDARD OIL COM-
PANY,

Appellees.

BRIEF FOR APPELLANT

RAYMOND BENJAMIN,
CHARLES D. HAMEL,

Special Assistants to the Attorney General,

Solicitors for Appellant.

FILED

SEP 13 1927

F. D. MONCKTON,

No. 3682

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

CALIFORNIA MIDWAY OIL COM-
PANY, ASSOCIATED OIL COM-
PANY, COLUMBUS MIDWAY OIL
COMPANY, THIRTY-TWO OIL COM-
PANY, L. B. McMURTRY, J. M.
McLEOD and STANDARD OIL COM-
PANY,

Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
NORTHERN DIVISION.

BRIEF FOR APPELLANT

STATEMENT OF THE CASE.

This is a suit in equity brought by the Govern-
ment to restrain continuing waste and depletion of
the oil contents of a tract of public land described

as the Northwest Quarter (NW $\frac{1}{4}$) of Section Thirty-two (32), Township Thirty-one (31) South, Range Twenty-three (23) East, Mount Diablo Base and Meridian, and for other relief. The legal title to the land is in the United States. It is included within the area described by the Presidential withdrawal order of September 27, 1909. Drilling for oil was going on upon the land at the date of said withdrawal order. On January 1, 1909, the quarter section had been claimed as an oil placer mining claim by an alleged association of eight persons consisting of H. E. Bashore, R. B. Welch, W. A. Keenan, Eugene Metz, William A. Mahr, Herbert M. Walker, F. H. Romaine, Jr., and C. Rupert Walker, in whose names the defendant L. B. McMurtry posted and recorded notices of location (Plaintiff's Exhibit 10, Record page 881), McMurtry acting under power of attorney from the alleged locators dated December 19, 1907 (Plaintiff's Ex. 4, R. 877).

McMurtry had, since 1908, been extensively engaged in speculating in and disposing of alleged locations for prospecting and developing oil land, a part of the public domain in California (R. 769).

In 1903, while in Chicago attempting to sell stock in a company organized for the development of such locations known as the Oriental Oil Company, through L. A. Shadburne, whom McMurtry had known for many years and who was employed in selling stock for the Oil Company (R. 119-120), McMurtry became acquainted with C. A. Dunbar

(R. 120). At the request of McMurtry Dunbar obtained from his friends and acquaintances employed at the Stock Yards in Chicago two powers of attorney (R. 123), each executed by sixteen persons known in the record as the Chicago locators, authorizing him to locate in their names mineral claims in any part of the United States and to improve, develop and make proof thereof, and to grant, bargain and sell the same. McMurtry caused these powers of attorney to be recorded in San Benito County, California (Plaintiff's Exs. 8 and 9, R. 881), and acting under them posted notice of locations in the names of the signers on numerous tracts of unoccupied, possible oil properties in that county, which, however, were never developed or proved to be oil bearing (R. 814).

In 1906 or 1907 development in the Midway Oil fields in Kern County became active and McMurtry, about January 1, 1907, posted or caused to be posted location notices in the names of the Chicago parties on sundry quarter sections of land in that district—some twenty-seven in number—including the property involved in this suit (Plaintiff's Exs. 28 and 29, R. 893). Subsequently, on November 9, 1908, he caused certified copies of the Chicago powers of attorney to be recorded in Kern County (R. 880-881). The several tracts described in the location notices so posted were merely prospective oil lands and none of them were developed and no discovery of oil was made on any of them until after the abandonment of the locations on December 31, 1908

(R. 814). In the fall of 1908, however, McMurtry, acting as attorney in fact for the Chicago locators made a contract with Mrs. J. M. McLeod for the development of the property in controversy, and also the northeast quarter of the same section upon which a location notice had been posted in the names of certain of the Chicago parties, under the terms of which Mrs. McLeod was to drill for oil on each tract, and if it proved to be oil bearing she was to have as consideration therefor one-half thereof (Plaintiff's Ex. 36, R. 899). A short time thereafter the contract was modified by reducing the area to accrue to Mrs. McLeod to the south sixty acres of each quarter section (R. 804), and her interest became vested in the California Midway Oil Company (R. 902), which some time in December, 1909, moved lumber and other material onto the south sixty acres of the northwest quarter of the section preparatory to beginning active operations (R. 763-867). Before it had commenced drilling, however, McMurtry learned that there were defects in the locations made in the names of the so-called Chicago locators. These defects consisted of discrepancies in the spelling of names and use of initials (R. 775). McMurtry had also discovered that the stakes by which the locations were made were approximately a quarter of a mile out of line (R. 801). McMurtry advised McLeod, acting for Mrs. McLeod, of the supposed defects and discrepancies shortly after he had learned of them and told McLeod that he would remedy the same (R. 775-

776). McMurtry thought that these defects might be corrected from Chicago (R. 776). He also consulted his attorney (R. 776). In the very late part of 1908 he determined to relocate this land (R. 778). He thereupon, on January 1, 1909, relocated all the lands previously located by him in the names of the Chicago parties, posted and caused to be recorded new notices covering practically the same tracts, together with some additional tracts, in the names of certain residents of New York under powers of attorney executed by them in December, 1907 (Plaintiff's Exs. 4, 5, 6 and 7, R. 877 to 880). These powers of attorney were obtained under the following circumstances: During the summer and fall of 1907 McMurtry had transferred his activities to New York and was engaged in selling stock in an oil company known as the Empire Oil and Development Company (R. 666), which company claimed under lease some of the lands located in the names of the Chicago locators and subsequently relocated in the names of the New York locators (R. 776). The financial panic of that year made it impossible for him to continue his operations, and in December he concluded to return to California (R. 777-778, 312). Before doing so he asked associates of his by the names of Thorn, Thickers, Powell and Searls to obtain four powers of attorney, each executed by eight persons, authorizing him to locate, develop and dispose of oil lands in their names if he should be able to locate any such land open to entry on his return to California (R.

778). The purpose was to locate lands in San Benito County, not in Kern County (R. 778). Thickens, Thorn, Powell and Searls thereupon approached their employes and friends and requested the execution of such powers of attorney, assuring them that they would thereby incur no financial responsibility and there might be something in it for them (R. 739, 669, 313). Four powers of attorney, one of which was used in making the location in suit, were thereupon executed and acknowledged, each by eight separate persons, authorizing and empowering McMurtry to locate in the names of the signers mineral claims, to develop and improve the same, and to bargain, sell and dispose thereof (Plaintiff's Exs. 4, 5, 6 and 7, R. 877-880). These powers of attorney were delivered to McMurtry and duly recorded in San Benito County, and subsequently in Kern County (R. 879), and were used by him in posting and causing to be recorded location notices on the several tracts mentioned in this suit and other property, eight names being used for each tract (Plaintiff's Exs. 10 to 17, 19, 21, 23, 25, 26, 27, R. 881 to 891). In some instances he authorized third persons to use the names of the signers of the powers of attorney in making locations for themselves (See testimony Sue Greenleaf, R. 747; Earl S. Shaw, R. 763; R. 788-789).

A few days after the location in controversy in this suit was made, McMurtry, in the names of Bashore and others, under one of the powers of attorney referred to, agreed with the California Mid-

way Oil Company, through its representative, J. M. McLeod, that it should proceed with the development of the property covered thereby, and the northeast quarter of the section located by him in the names of another group of the New York parties, on substantially the same terms as the previous contract with Mrs. McLeod as modified, but under the New York locations (R. 779).

In January, 1909, the California Midway Oil Company commenced drilling for oil on the south sixty acres of the northwest quarter and continued such work to discovery (R. 763). On May 17, 1909, McMurtry, as attorney in fact for the New York locators, conveyed their interest in the entire north half of the section to J. M. McLeod, subject to the outstanding contract under which the California Midway Oil Company was in possession and at work (Plaintiff's Ex. 34, R. 899), and simultaneously therewith and as a part of the same transaction McLeod agreed in writing that if oil should be discovered on either of the quarters he would immediately make application for patent therefor, and upon issuance of the receiver's final receipt would, by good and sufficient deed, grant, bargain, sell and convey to the locators the North 100 acres of each quarter (Plaintiff's Ex. 33, R. 895).

On December 3, 1909, McMurtry as attorney in fact for the McMurtry locators assigned all right, title and interest in the contract of May 17, 1909 (Plaintiff's Ex. 33), and in other contracts (Plaintiff's Exs. 33, 55 and 57, R. 909-910) with McLeod

to C. L. Claflin, his attorney (Plaintiff's Ex. 30, R. 894), and on the following day Claflin transferred the same to McMurtry (Plaintiff's Ex. 31, R. 894).

About May, 1910, McMurtry as attorney in fact for the New York locators sold or contracted to sell the west forty acres of the north one hundred acres of the northwest quarter to the Columbus Midway Oil Company for \$100,000, and received in payment therefor the sum of \$10,000 (R. 843-845; 856-855), and on March 22, 1911, as such attorney in fact deeded the property to the company, securing himself for the payment of the balance due thereon (R. 842 and 818). The Columbus Midway subsequently made default in the payment of the balance of the purchase price, and on November 22, 1912, conveyed the property to McMurtry individually in satisfaction thereof, and the record now so stands (R. 818, 856).

In June, 1910, overtures were made by a representative of McMurtry to the Associated Oil Company to sell to it the remaining 60 acres of the northwest quarter and the north 100 acres in the northeast quarter of Section 32, and 1280 acres in various other tracts covered by paper locations made by him in the names of the New York parties (R. 846-847).

On August 4, 1910, a written contract was entered into between the New York locators, by McMurtry as their attorney in fact, and W. F. Herrin and others known as the Herrin grantees acting for the

Associated Oil Company, which agreement set forth that the sixteen named persons, each of whom had executed a power of attorney to McMurtry, represented that on January 1, 1909, they had legally located the northwest and the northeast quarters of Section 32, Township 31 South, Range 23 East, M. D. B. & M., under the mining laws of the United States; that they were still the owners thereof, subject to the deed to and agreement with McLeod of May 17, 1909; that a discovery of oil had been made on the northwest quarter in May, 1909, and that ever since that time they, either by themselves or their agent or representative, had diligently and continuously operated the property to the end that a discovery of oil should be made upon each and both of the quarter sections; that the Thirty-Two Oil Company had an apparent interest in the property, and L. B. McMurtry had an interest in the said lands with the sixteen persons, that is the locators; and that McMurtry is the duly authorized, empowered and acting attorney in fact for each and all of the sixteen named persons, with the right to sell their interest in the property and make conveyance thereof.

The contract then provides that in consideration of \$5,000 paid to McMurtry by the Herrin grantees he would place in escrow deeds executed by himself as attorney in fact for each and all of the locators conveying to the Herrin grantees all their interest in the north 100 acres of the northeast quarter and the north 100 acres of the northwest quarter except

the west 40 acres of the latter tract, and also deeds from McLeod, the Thirty-Two Oil Company, and himself individually conveying to said grantees their interest in the property; that he would proceed forthwith to obtain from the various locators deeds in proper form to be recorded pursuant to the laws of California, an acknowledgment that at the date of such agreement his power of attorney was in full force and effect, and also a ratification and confirmation by each and all of such persons of the execution of such deeds. The purchase price of the 160 acres in the north half of Section 32 was to be the sum of \$430,000, \$175,000 of which was to be paid in cash and the balance, with interest, in production. It was agreed that immediately upon the deeds referred to being placed in escrow by McMurtry the Oil Company would deposit with the Bank of California \$85,000, which should remain in escrow until the ratification and confirmation provided for should be obtained from the locators, when it and the \$5,000 previously paid to McMurtry should be applied on the purchase price of the property. The remaining \$85,000, with interest, was to be paid within six months thereafter, and in case the ratifications were not obtained the \$5,000 should be returned and the \$85,000 deposited in the bank withdrawn by the Oil Company. The balance of \$255,000 was to be paid from production at the rate of twenty cents per barrel. The contract also recites that the Associated Oil Company, as the agent of the Herrin grantees, had made and entered into

contracts with McMurtry as attorney in fact for the purchase of other tracts of land located in the names of the New York locators, aggregating 1280 acres, at an agreed price of \$1593.75 per acre, payable from the oil produced from such property. In case the grantees should be dispossessed by the United States or other claimants of any of the property it should not be responsible for the unpaid purchase price of such property or for damages on account thereof. It was agreed that the \$5,000 advanced by the Associated Oil Company to McMurtry was to be a lien upon all the interest of said McMurtry in and to said land (Defendant's Ex. K, R. 913, et seq. R. 861).

The deposits in escrow were made by the respective parties as provided in the contract and the attorney for the proposed purchasers prepared a form of ratification to be executed and acknowledged by the several locators, as follows:

I, the undersigned, do hereby acknowledge that that certain power of attorney of date the — day of December, 1907, and recorded in Book 10 of Powers of Attorney at page 21, Records of Kern County, State of California, by me together with seven others executed to L. B. McMurtry is and at all times since said date has been in full force and effect and has never been revoked or modified; and I do hereby ratify, approve and confirm those certain contracts of sale made for me and in my name by L. B. McMurtry as my said attorney in fact with W. F. Herrin et al. of date the 4th

day of August, 1910, and all contracts, agreements, deeds and conveyances made by my said attorney for me and in my name of and concerning said contract of sale and sale, and also all other contracts and transactions and acts made or done under said power of attorney by the said L. B. McMurtry.

(R. 781; Government's Ex. No. 1, R. 167.)

McMurtry thereupon went to New York and in due time obtained from all of the 32 persons who had previously given him powers of attorney, except one who was dead, the execution and acknowledgment of the above ratification (R. 781, 810). It was represented to them at the time the ratifications were requested that McMurtry had made locations in their names under the powers of attorney given him and had sold or contracted to sell part of the land so located. \$250 was paid to each of the locators, either at the time of the signing of the ratification or subsequently thereto, by check signed by one Searles but which was cashed by him upon being endorsed by the payee thereof (R. 907, 908). Upon the back of each check and immediately above the endorsement of the payee was the following:

Received from L. B. McMurtry \$250.00, in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a Power of Attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907.

(Plaintiff's Exhibit No. 50, R. 908.)

Thereafter and in 1910 the ratifications were delivered to the Associated Oil Company, the deeds previously deposited in escrow by McMurtry withdrawn by it, the money deposited by the oil company paid over to McMurtry, and the sale consummated (Defendant's Ex. 0-1, R. 927; R. 782, 860.

In August, 1911, McMurtry caused to be organized the corporation known as the Pacific Oil Lands Company, with a capital of one million shares of the par value of one dollar each, and himself subscribed for all of the stock except three shares (R. 783, 815). On September 1, 1911, acting for himself and as attorney in fact for the New York locators, he transferred to such corporation their interest in the contracts of August 4, 1910, with the Associated Oil Company and a contract with McLeod covering another section (Plaintiff's Ex. 32, R. 894).

A short time after the organization of the Pacific Oil Lands Company McMurtry canceled or caused to be canceled a part of his subscription to the capital stock of the corporation, and to be issued in lieu thereof certificates to A. E. Hoepfner and F. E. Harrison, and 1,000 shares to each of the thirty-two locators (R. 783, 486). The certificates of stock in favor of the locators were delivered to them some time about September, 1911, by McMurtry or his agent (R. 783), it being explained to them at that time that McMurtry had caused the organization of the Pacific Oil Lands Company for the purpose of handling the property located by him under the

power of attorney, and that such shares represented their interest therein (R. 784). They were advised at the time to hold the stock as it would prove valuable, and in August, 1913, the several locators, at the request of the Secretary of the Pacific Oil Lands Company, gave to McMurtry a proxy authorizing him to represent them and vote their stock at a meeting of the stockholders of the corporation to be held in San Francisco (Plaintiff's Ex. 5, R. 175). In December, 1913, they were advised by letters of the Secretary of the Pacific Oil Lands Company that the corporation had \$20,000 in cash which it wished to distribute among the stockholders as a dividend, but under the laws of California the directors could not do so without the consent of the stockholders, and enclosing a written consent to such distribution with the request that it be signed and returned, which was done accordingly (Plaintiff's Ex. 32, R. 481; Government's Ex. 6, R. 176).

In January, 1914, they received from the Secretary of the Oil Company a check for \$20.00, enclosed in a letter saying that it represented their dividend as declared by the directors in pursuance with their written consent; and there was also enclosed with such letter a statement covering the affairs of the company entitled "Pacific Oil Lands Company. First Report to Stockholders." (Plaintiff's Ex. 34, R. 483; Plaintiff's Ex. 35, R. 484).

Thereafter, in the spring of 1914, F. H. Searls called upon the several locators and offered to take up their stock in the Pacific Oil Lands Company

and pay each of them \$250 therefor. The locators accepted this offer, transferred their stock in blank to one Walter S. Brann and accepted the \$250. This sum, together with the \$250 previously paid and the \$20 dividend, is all the locators ever received on account of the location made in their names by McMurtry.

Upon this testimony the Court found the location made in 1909 was for the use and benefit of the New York locators named therein; that the location of the land on January 1, 1909, in the names of the New York locators was not for the benefit of the California Midway Oil Company and to enable McMurtry to comply with his previous contract with Mrs. McLeod and others. (259 Fed. 343-355.)

The Associated Oil Company is not now in the case. On May 2, 1921, an order was entered in this Court remanding this cause to the District Court of the United States for the Southern District of California, Northern Division, and directing that a mandate issue out of this court directing said District Court to dismiss said cause as to the Associated Oil Company in view of and because of its relinquishment to the United States of America of all right, title and interest in and to the land claimed by it and the acceptance of a lease therefor under the provisions of the Act of Congress approved February 25, 1920. In accordance therewith mandate issued and pursuant to the terms thereof an order was entered in the Court below May 5, 1921, dismissing this cause as to Associated Oil Company.

ARGUMENT.

There are three questions which we wish to present for the consideration of this Court. There are nine points in the assignment of errors (R. 112) but they are merely different ways of putting these three questions.

The first is, whether the Court was warranted in holding that the power of attorney under which the land in suit was located was executed by the New York locators in good faith and the location made for their sole use and benefit.

The second is, whether the Court was warranted in holding that the location made on January 1, 1909, on the land in suit was for the use and benefit of the New York locators and not for the benefit of the California Midway Oil Company, claiming sixty acres under a previous contract made by McMurtry as attorney in fact for the Chicago locators.

The third is, whether the Court was warranted in holding in substance and effect that the California Midway Oil Company and the Associated Oil Company having acted in the utmost good faith both in acquiring and purchasing the locators' interest and paying therefor without notice, knowledge or suspicion that there was or could be any question about the bona fides thereof, such purchase by said defendants of the alleged interests of the persons in whose names such location was made entitled said defendants to rights to which otherwise they might not have been entitled.

I.

THE LOCATION WAS INVALID AS ATTEMPTING TO OBTAIN MORE ACREAGE THAN ALLOWED BY LAW.

The land here involved was located January 1, 1909, as the Montana Placer Mining Claim, in the names of H. E. Bashore, R. B. Welch, W. A. Keenan, William Mahr, Herbert M. Walker, Eugene Metz, F. H. Romaine, Jr., and C. Rupert Walker, known as the New York locators, by L. B. McMurtry, under power of attorney executed by the eight persons named on December 19, 1907. Prior to the location referred to the same land had been located on January 3, 1907, in the names of J. L. Bacon, J. H. Dolbers, W. H. Mahoney, C. W. Nettels, Thomas H. Lee, Hokan Roll, Bert S. Dennison, and H. Hagenbuck, known as the Chicago locators, by L. B. McMurtry under power of attorney executed by the eight persons named, together with eight others, on December 21, 1903 (Plaintiff's Ex. 28, R. 893).

For many years prior to January 1, 1909, McMurtry had been engaged in speculating in and disposing of alleged locations of prospective and undeveloped oil lands a part of the public domain in California. His idea of what a bona fide locator was and what his intentions were in locating these lands, it is submitted, are material. McMurtry testified:

It hadn't entered my head—let me make a further explanation—my understanding up to

1916, at the time this case was before the United States Court, that a dummy was a man who did not exist, or in taking some man's name without his knowledge and using it, but it appears that the Special United States Attorney General passed a different construction on it, and claimed a man is a dummy who really hasn't an interest in the property (R. 824-5).

Also:

But where a man had not received any money for the use of his name, if he was a bona fide citizen of the United States, I never realized that he was a dummy locator. (R. 827.)

He also testified:

Q. Is it the truth that they were bona fide locators at the time you made the location; as you understood it, was Mr. Taylor a bona fide locator? A. That depends on what is considered a bona fide locator. Q. What did you consider it at the time? A. I considered that he was, because he was a live man. (R. 834.)

McMurtry up to 1916 understood that a "dummy" was a fictitious person; or one whose name was used as a locator after receiving money for the use of his name. A "live" person whose name was used with his knowledge and who received no money therefor was, without regard to any interest such a one might have in any location made, a bona fide locator in the mind of McMurtry. McMurtry seems to have been very much surprised when in 1916 he learned that attorneys for the Government were claiming that a man is a "dummy" who has no

interest in the property located in his name. What was done under the Chicago power of attorney and New York power of attorney should therefore be considered in the light of what McMurtry had in mind when he was seeking locators.

THE CHICAGO LOCATORS.

In 1903, while McMurtry was in Chicago attempting to sell stock in an oil company, he secured, through Mr. C. A. Dunbar, the signatures of the so-called Chicago parties to the powers of attorney. Using these powers of attorney during the years 1905, 1906 and 1907, he located lands in San Benito County, and in January, 1907, in Kern County; and acting under one of these powers of attorney, in October, 1908, entered into an agreement with Mrs. J. M. McLeod affecting the land in suit. Mr. Dunbar, who himself signed one of the powers of attorney, testified:

I signed it out of friendship for Chadburn and McMurtry. Didn't know it amounted to anything. Had no intention whatever of taking up any public lands for my own benefit or use. Don't recollect that McMurtry ever said anything to me about this paper. Chadburn said he wanted it for McMurtry to use for the Oriental Oil Company. Don't recall that he said how it was to be used. Didn't know my name was to be used in the location of oil lands, nor did I have any intention of claiming any lands that my name might be used to locate. Didn't know I was signing a location of that kind.

* * * I was doing that as a personal favor to Mr. McMurtry. Q. Did you ever intend by signing this power of attorney to acquire a patent to any public oil lands in the United States. A. I didn't know that I had any. At that time I didn't know that I had any right whatever to oil lands of any kind (R. 123-124).

And as to the securing of the signatures of others, Dunbar testified:

Mr. Love and I were instrumental in getting the signatures; I asked some of them to sign. Took them as they came in the office, wherever we thought a man would sign, we asked him. I didn't explain to any of them just what they were signing or what the rights would be under the laws of the United States. I couldn't make any explanation in that respect at all, because I didn't know myself. They signed as a favor to Love and myself more than any other reason. At that time around the stockyards it was very easy to get a man to sign his name to a paper of almost any description. There were papers of some kind circulated through that building every week, even to this day, asking for signatures. It was formerly our custom to sign them (R. 125).

Fourteen of the Chicago locators testified that they did not remember signing the powers of attorney, or did not know the significance thereof, and had no knowledge of the locations made in their names or of McMurtry until approached in the matter by a representative of the General Land Office in 1916. The testimony of the Chicago locators

shows that they were without an interest, acting wholly in the interest of McMurtry or some other person. It is such locators as are described in this testimony that McMurtry was relying upon when under the power of attorney the agreement of October, 1908, was entered into with Mrs. J. M. McLeod, to whose interest the California Midway Oil Company succeeded in November, 1908.

About November, 1908, however, McMurtry discovered that in locating this land in the names of the Chicago locators some errors had been made in the spelling of the names of the locators and in the use of initials. As to this situation McMurtry testified:

I have a dim recollection of telling McLeod that the matters would be adjusted satisfactorily. I can't say just what I meant by that, because I don't know just what my thought was at that time. I thought perhaps they might be corrected from Chicago, or some other way. I knew there would be some remedy for it in some way. * * * I advised McLeod of the defects and that I would remedy the same. (R. 776.)

He also testified that it was not until "the very latter part of 1908" that he determined to use the New York locators in relocating the land (R. 778). So that up to that time apparently he still believed that the so-called defects might be "corrected from Chicago." McMurtry had in his possession at that time a power of attorney from the New York locators, and apparently not being able to correct these

defects without going to Chicago, he used that power of attorney and relocated this land, as well as all the other lands in Kern County that had been located in the names of the Chicago locators.

It may be true, as stated in the opinion of the Court below, that—

None of the defendants claim under the Chicago locations, nor did the New York locators, at the time the powers of attorney were executed by them and the locations made in their names, have any notice or knowledge of the Chicago powers of attorney or McMurtry's actions thereunder, nor did they obtain such information until long after the sale of their interests, if any, had been completed and final payment made. (259 Fed. 343, 350.)

It may also be true that the Chicago locations were mere paper locations and whatever rights, if any, were acquired thereby lapsed or were abandoned before discovery and the property thereby became open to relocation by any qualified person or persons (Ibid. 350). Granting these things, it is submitted that the evidence showing the circumstances under which the so-called Chicago powers of attorney were secured and the locations thereunder made is entitled to great weight in determining the bona fides of the alleged locations made by McMurtry under the so-called New York power of attorney under one of which locations the defendants here claim. The statement of fact shows that the signatures to the New York powers of attorney

were secured in practically the same manner as were those to the Chicago powers of attorney. When in 1907 McMurtry secured the signatures to the New York powers of attorney he had the same idea as to what a bona fide locator was as when he secured the signatures to the so-called Chicago powers of attorney. In the light of the fact that this very land had been located in the names of the Chicago locators and obligations assumed thereunder, it is submitted that a consideration of the facts and circumstances surrounding the securing of the powers of attorney under which the Chicago locations were made is justified.

To illustrate or establish fraudulent intent, in civil or criminal actions, evidence of other acts of the party of a kindred character are allowable.

Wood v. United States, 16 Pet. 342, 360, 10 L. Ed. 987, 994.

Castle v. Bullard, 23 How. 172, 176-177, 16 L. Ed. 424, 428.

Lincoln v. Claflin, 7 Wall. 132, 138, 19 L. Ed. 106, 109.

It is submitted that if it is found that the so-called Chicago locators were without an interest then that fact, taken into consideration with McMurtry's idea of what a bona fide locator was, is of great importance in reaching a conclusion as to the character of the New York locators. McMurtry apparently was willing to rely upon the Chicago locators, and undoubtedly would have relied upon them

except for the so-called defects. He believed that because of the so-called defects he could not make a satisfactory transfer (R. 806). It was not because these locators were without an interest, as the testimony amply shows they were, that he decided not to rely upon them, but because of what he believed to be defects in form.

We are of the opinion that it is not permissible to consider the coal entries herein involved separately and apart from the whole scheme portrayed by the evidence which had in view the acquiring of the public coal lands of the United States in the manner shown.

United States v. Kirk, 248 Fed. 30, 35.

THE NEW YORK LOCATORS.

Having in mind the situation up to December 31, 1908, let us proceed to the New York locators. McMurtry had been selling stock during the year 1907 in New York in a company known as the Empire Oil and Development Company. The panic of that fall had stopped all efforts in that direction and he decided to return to California. Before returning he decided to get these powers of attorney under which the New York locations were made. Accordingly, they were secured in December, 1907. They were procured by friends and former associates of McMurtry in the Empire Oil and Development Company, in which his associates had lost money. Referring to the situation as it existed at the time the powers of attorney were secured, he testified:

My recollection was that in securing these powers of attorney it was for the specific purpose of locating lands in San Benito Field, and that if the property proved to be oil land to repay—well, there were two or three of those men who had secured powers of attorney that had advanced money for the Empire Oil Company—to repay them their money. (R. 824.)

He caused the powers of attorney to be prepared but was not present when any of them was executed. During a discussion as to the financial condition of the Empire Oil and Development Company he asked Thickens, Thorn, Searls and Powell to get them executed (R. 777). He had no conversation with any of the persons who signed them in regard to the location of lands thereunder, nor did he by writing or otherwise communicate to them any of his plans or intentions other than those named. McMurtry testified:

When I asked Thorn, Searls, Powell and Thickens to get these powers of attorney I said nothing about what they were to get. I asked them simply to get thirty-two locators to locate San Benito property. (R. 798.)

The remark that I made to them, in my room, was to this effect: I asked them first if they could get these powers of attorney. They said they could. I told them that I wanted them for a specific purpose and if the land proved to be oil land that we would make some money out of it. That is all that was ever said to them. (R. 819-820.)

Referring specifically to one of the New York locators, he testified:

I testified that no promise was ever given Taylor to give him any interest in the locations; that there never was any intention of doing so; that Taylor never had any interest in these locations. (R. 824.)

The testimony of Thorn (R. 668-669), Thickens (R. 739), and Powell (R. 312-313) corroborates that of McMurtry. Powell testified that McMurtry—

suggested that he obtain a power of attorney from a number of interested parties and asked me to secure some, so that if, when he returned to California, there were public oil lands, which might be available as oil lands, he would be in a position to locate them. By interested parties he meant those interested with us in the Empire Oil & Development Company. (R. 312.)

After securing these powers of attorney McMurtry returned to California and located lands in San Benito County, and, under the circumstances heretofore referred to, relocated the land in suit on January 1, 1909, together with other tracts.

As to the particular locators on the tract in suit, all of them except R. B. Welch were at the time the power of attorney was executed employees of J. B. Thickens. R. B. Welch was a brother-in-law of Thickens. The testimony of all of them was taken. The locators upon this quarter-section testified with reference to the circumstances under which the power of attorney was executed as follows:

H. E. BASHORE: He (J. B. Thickens) came to me one day and asked me to sign my name to a paper which, he said, was a power of attorney giving McMurtry power to locate certain oil lands in California. He said I would not be required to put up any money, and by my signing this paper it would mean a lot to him as well as assist Mr. McMurtry. Under those conditions I did not hesitate to affix my signature, knowing that I would not be involved financially in any way, shape or form. Had no intention of acquiring land for myself, and was never informed of my name being used at any time in locating any land. (R. 676.)

R. B. WELCH: Q. Did you have any conversation with Mr. John B. Thickens about signing this power of attorney? A. Not that I remember.

Q. Well, what, if anything, was said to you prior to the time you signed the power of attorney, by Mr. Thickens? A. I cannot recall.

Q. Where were you when you signed it? A. I cannot recall that.

Q. Were you in the city of New York? A. I cannot say.

Q. Did you appear before a notary public when you signed it? A. I cannot say that.

Q. Why did you sign it? A. I cannot recall why I signed it.

Q. You cannot recall that you did sign it? A. I suppose that I did; I signed several papers, but I cannot recall that I signed this particular one.

Q. Why did you sign any papers in respect to this matter? A. Why, I trusted to my brother-in-law and signed whatever he asked me to sign.

Q. What purpose did you have in mind when you signed these papers? A. Why, I don't know.

Q. Were you familiar with the laws of the United States at that time governing the location or the making of placer mining claims upon the public domain of the United States? A. I was not.

Q. At the time you signed this power of attorney, what was your intention with respect to exercising your rights under the laws of the United States, in taking up or locating upon the public domain? A. I suppose I was locating a claim and that some day it would be worth some money.

Q. Where did you get any information which engendered that supposition in you? A. From Mr. Thickens, I suppose, if I got any. (R. 250-251.)

C. RUPERT WALKER: I was over in Nixon & Thickens and signed this paper for them. J. B. Thickens presented it to me. Don't remember any conversation with him prior to the time I actually signed the paper with regard to signing it. Remember going with Thickens before a notary there, but don't know who that was, though, now. Signed the paper as a favor to Mr. Thickens because he was my boss and employer, and I had full confidence in him. Don't remember just what Mr. Thick-

ens said at that time, except that I know that I signed it as a favor to him, and the others had signed it. This was ten years ago, and it is very hard to bring it back to my mind. (R. 596.)

WILLIAM A. KEENAN: Thickens presented this paper to me. Had no talk with him before about oil matters. To the best of my understanding, no one else was present but Thickens and myself. Thickens asked if I was twenty-one years of age and I told him I was, and he said I want you to give me your power of attorney, and I want Mr. McMurtry to locate oil lands for us in California.

Q. And by "us" whom did he mean, if you know? A. There were at that time at least three or four signatures on the paper, at the time I signed it. I then knew Herbert M. Walker, F. H. Romaine, Jr., C. Rupert Walker, Eugene Metz, William Mahr, and H. E. Bashore, but not R. B. Welch. At that time I don't think there was any further conversation than he mentioned about the power of attorney, and said it would prove of value to us in the future. (R. 610-611.)

EUGENE METZ: Thickens came to me and asked me if I would give a friend of his a power of attorney to go and locate lands for me, and so I asked him what it was for, and he said to try and find oil, and he said to me if he found oil, you would probably make a lot of money out of it, and so naturally I became interested, and I was willing to sign it, and I signed it. I think that was the only conversa-

tion I had had with anyone before the signing. I then knew, as a citizen, I was entitled to some land in this country, if I could get it. My father had taken some farm land in Wisconsin and I didn't know but maybe I was entitled to the same thing. No, Thickens didn't say he was trying to get farm or mineral land. He said to try and locate land and get oil. No, I didn't then know how many acres constituted a claim or how many persons were required to make an association claim and received no particular advice on that matter from Thickens that I recall. (R. 587-588.)

FRANK H. ROMAIN, JR.: Did not know McMurtry at the time I signed that power. Thickens brought it to me and explained it, and explained the usage of selling California oil lands at that time, and he said there was no question but what the transaction was clean, above the table, and all that, and of course he was one of my employers and naturally I thought that there could not be anything outside of what he said, and besides that, it was the way that lands were being located in California at that time, according to the laws of California, so I signed the power of attorney right then, after he had explained it to me. (R. 573.)

HERBERT M. WALKER: It was probably Mr. Thickens who presented it to me, but I cannot remember just little details that far back. I was connected at that time with Nixon & Thickens, in the capacity of salesman, and Thickens knew this McMurtry and at that time I believe McMurtry was interested in some oil

company that he wanted to sell shares for; that was prior to December, and Thickers wanted me to buy some shares of stock in that oil company, and at that time I didn't have any money to put in oil stocks. I didn't buy any, and a little later Thickers came along and he said he had a friend by the name of McMurtry who was well up on oil lands and that he believed if he would give me the power of attorney to locate oil lands for us. it would prove valuable, and therefore I gave him the power of attorney. (R. 624-625.)

WILLIAM A. MAHR: Mr. Thickers asked me to sign the power of attorney, giving Mr. McMurtry power to locate lands for me, oil lands, in California. We had been talking about it day in and day out long before I ever signed it. No, I had never seen the document before I signed it. I believe I was then at my desk. Q. And what was said at the particular time when the document was presented for your execution? A. Sign this power of attorney to locate lands for you in California. No, I did not read it. Don't remember reading any portion of it. Never had talked to McMurtry about it. No did not at that time know C. W. Thorn. I knew all the boys in the office that signed it, and think their names were on it when presented to me for signature. (R. 527-528.)

This testimony shows that some of these locators had no intention to acquire any interest in any lands under the powers of attorney, and as to others that they lacked intentions of any kind and none

of them knew anything about the mineral laws. Few of them were aware of the significance of their acts and merely signed as a favor to their employer Thickers, perhaps in the hope that there might be something in it for them. With locators of this kind McMurtry proceeded to locate many tracts of land and to make various deals for development.

McMurtry not only made locations himself, but other persons were permitted to use the names of the New York locators in making locations. The most striking case was that of Sue Greenleaf. She testified that she located fourteen claims (Plaintiff's Exhibits 17, 19, 21 and 23; R. 747-748) in the names of the New York locators. the names being signed by her in the location notices (R. 756). She testified with reference to this matter:

I was going to locate the lands in my own name and in the names of relations; Mr. McMurtry advised me not to have anything to do with my relations, that he had the power of attorney to act for certain New York people, and that I could use those names. and he would give me a quitclaim deed, as he was the attorney in fact. He told me that if he gave me the quitclaim deeds I would have to develop these lands at my own expense, and in the event that there were any results from the development, those people were to have an interest. Nothing was said as to what interest they were to have, except that he said it would be a nominal sum, probably depending upon what I would care to give or they might ask, and that one locator

had told him he would take \$250 for his interest. (R. 748.)

The transaction with the Associated Oil Company as to some of these lands located by McMurtry involved a large amount of money. Out of this transaction with the Associated Oil Company came his effort to get the so-called ratifications in August and September, 1910. From the time that these locators had signed the power of attorney until they were called upon to ratify the acts of McMurtry and received \$250, they apparently forgot about the matter. They made no inquiries and received no information as to what had been done.

The so-called ratification not only purports to ratify, approve and confirm the so-called Associated Oil Company contracts, but also all other contracts and transactions and acts made or done under the respective powers of attorney by McMurtry (Ex. 1, R. 167). The ratification on its face refers to the contracts with the Associated Oil Company and it fairly appears from the testimony of McMurtry and the locators that when they were asked to sign the ratifications they were advised as to its purpose (R 782). The testimony of the locators on the land in suit with reference to the signing of the ratification is as follows:

H. E. BASHORE: After signing this power of attorney, the next I heard of the matter was some time later Thickens asked me to sign another paper the name of which I have forgotten. * * * I read it before signing, but

don't recall any specific conversation concerning these contracts of sale dated August 4, 1910, referred to therein. Relied a good deal on Thickers, he being a personal friend. I never felt that he would ask me to do anything but what was right. I simply signed it as I did the power of attorney. I was not then informed that my name with certain others had been employed in making the placer mining locations mentioned. At the time I signed the ratification I claimed no interest in any land affected by this contract of August 4, 1910, between McMurtry and W. F. Herrin and other. (R. 676-677.)

R. B. WELCH: Q. When did you sign that?

A. Unless I was looking right at it, I should say on the 19th of August.

Q. How did you come to sign that paper?

A. I cannot tell you?

Q. Do you know who presented it to you?

A. I do not.

Q. Can you, after reading Exhibit 8 recall now and relate to us the circumstances under which you signed that paper? A. I cannot.

Q. Do you know how it came into your possession? A. I do not.

Q. Do you know the stenographer or rather the Notary Carroll H. Brooks? A. Yes, sir.

Q. Where did he reside? A. I think he is in New Haven.

Q. Do you remember of having gone before him and executing that paper? A. Yes, sir.

Q. Was anyone with you when you executed that paper? A. I believe not.

Q. Why did you execute that paper? A. It was sent to me by someone, and I suppose it was proper to sign it. (R. 253).

C. RUPERT WALKER: The next circumstance in connection with this matter was that in August, 1910. I received a letter from Mr. Thickens to come into the office, that he wanted to see me.

(Letter produced and read in evidence as Plaintiff's Exhibit 62, as follows:)

Plaintiff's Exhibit No. 62.

"Dear Walker:

Am very anxious to see you. Have something of interest to tell you. Are you working in N. Y. and could you come in to see me some day this week. Either write me or call me on phone 201 Stuyvesant. It is important, and know will be welcome news. Just a little money coming to you, for your kindness in signing a paper for me three years ago. Will explain when I see you. Let me hear from you at once. Aug. 17, 1910.

Sincerely,

J. B. THICKENS,
79 Fifth Ave.,
N. Y. City."

Between the time I signed the power of attorney and the receipt of this letter, don't remember having any conversation or conference with any person or persons with respect to these

oil land transactions except Mr. Thickens had said that there would probably be some money coming to me. That was after I signed the power of attorney. (R 596-597.)

WILLIAM A. KEENAN: In 1910, say probably about August * * * Thickens came in to see me and asked me if I recalled the power of attorney that I had given to Mr. McMurtry to locate oil lands in California, at some time previous, and I told him yes, and he said there is some money coming to you, and it is necessary to have you ratify that power of attorney, so he took me out to a notary * * * and on the way to the notary's office I asked Mr. Thickens what had happened, and he told me that Mr. McMurtry had succeeded in locating oil lands and some of the oil lands had been sold and there was a payment of \$250 coming to me, which was the beginning, and there would be more payments from time to time. (R. 612.)

EUGENE METZ: After signing the paper heard nothing of this matter until 1910 and had no conversation with any person concerning oil land matters during that time—between the signing of the paper and 1910. In 1910 McMurtry came into our office and said he had located oil lands, and he expected to get a lot of oil out of that land, and it was such a big proposition he would have to sell part of the land in order to get money to work the balance of the land; that it cost a lot of money to run the thing and the only way to get all of this money was to sell part of it and use that money. No, I didn't then know how many locations

had been made, or the area, and made no inquiry of McMurtry. McMurtry then asked me to give him a ratification of my power of attorney. (R. 588.)

FRANK H. ROMAIN, JR.: The first distinct information that McMurtry, acting under this power, had located more [oil?] land was, I think at the time we were asked for the ratification. That was in about September, 1910. Thickens told me. (Plaintiff's Exhibit No. 55, a photographic copy of the ratification dated August 22, 1910, shown witness.) Yes, that is the ratification I signed. Thickens presented it to me. Did not see McMurtry at that time. I read it over before signing, but made no inquiry of Thickens as to what lands had been located or the quantity, except this, that I was told that a man could not locate more than I believe, the expression was, a quarter section. Thickens told me that at the time of the signing of this ratification. (R. 574.)

HERBERT M. WALKER: The next thing that I remember anything distinctly about is when McMurtry came in and wanted us to give him a ratification of our powers of attorney. That was about three years later. (Plaintiff's Exhibit No. 75 shown witness.) Well, I remember now, as I read this that Mr. McMurtry wanted me to give him this ratification of the power of attorney, that before I would do it I consulted a lawyer on it, and he read it over, and he advised the word "lawfully" be inserted there, which I notice had been done. Yes, it is between the words "acts" and "made" in the next to the last line. At that time Mr. Mc-

Murtry said that he had located property out there and he had very little money, and that in order to take and develop this property further, the way it should be, he would have to take and dispose of part of it in order to work the rest of it, and I therefore took and was given to understand by him at that time that unless he could take and dispose of part of it, that we, that is, the locators, would take and lose probably all of it. Therefore we took and gave him the ratification in order to try and hold what we had. (R. 625-626.)

WILLIAM A. MAHR: The first I heard of anything having been done by McMurtry under this power was in 1910. McMurtry then came to the office. Don't remember having discussed with anyone this power between the date of signing and the date McMurtry came to the office in 1910, nor did I make any inquiries during that time with respect to what McMurtry had done under it. It was in August, 1910, that McMurtry came to the office. He wanted to get my ratification of the power of attorney and said it was necessary for him to dispose of part of the lands in order to carry on the work of the balance and in order to do that he would have to get my ratification to show that I was still alive, and that he, that I was a real live locator, as he put it, and that he was still my agent. I would not sign the ratification at first. There were four of us there in the office: Herbert M. Walker, Metz, Wilson and myself. Mr. Nixon, our boss, advised us to consult an attorney to see that the ratification was all right, and that the word "lawful" was inserted in my

ratification and in the other three, and I signed mine. (R. 528-529.)

At the time the locators were asked to sign the ratifications referred to some of them were given checks for \$250. Others did not receive these checks until a year later. On the back of each check appeared the following in typewriting:

Received from L. B. McMurtry \$250.00, in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a Power of Attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907. (R. 908.)

The testimony shows that all of the locators signed their names without hesitation below the statement on the check quoted above. McMurtry, referring to this payment, testified:

I believed that that was what the locators were entitled to at that time and I gave that \$250 for all of their title and interest in and to that property under location. (R. 784; also R. 821.)

Eventually McMurtry transferred the contracts with the Associated Oil Company and some other assets of a similar nature to the Pacific Oil Lands Company, incorporated by him with one million shares, par value one dollar, for which the locators received 1,000 shares each, McMurtry and his associates in California receiving the balance (R. 783,

832). The locators were given and accepted the stock as the \$250 check was given and accepted. As to how the amount was determined, McMurtry testified:

I don't know that there was any particular rule worked out as to why one thousand shares of stock were given to each of the locators. I thought that that was what they were entitled to. Yes, I determined the question as I did the amount of \$250 which was paid to each of them in 1910 and 1911. (R. 784.)

Subsequently the locators were requested to sign proxies consenting to the distribution of a \$20.00 dividend. All of them signed, and each sent \$20.00. In the spring of 1914 the Pacific Oil Lands Company stock was taken up, for which each received \$250. Each locator therefore received as a result of this transaction a total of \$520.

The evidence fully sustains the contention of the complainant that the location of Sheep Creek placer claim was merely a scheme on the part of the defendant to acquire title to the ground by using the names of his employes and friends as locators. I have no difficulty in finding this to be the case from the testimony of the defendant himself, who frankly admits that he arranged for and directed the location of said claim, and that his purpose was to be sure of having the ground located in the names of his friends, with whom he could deal on terms satisfactory to himself; and he also admits that he has paid no consideration for the conveyances which the locators have made to him. The

evidence shows, however, that he did pay some of the locators who went upon the ground for doing so.

Durant v. Corbin, 94 Fed. 382, 383.

The testimony of McMurtry shows that he never intended that these locators should be anything more than "dummies," to further his operations, the same as the Chicago locators had been. He testified as to one of the New York locators:

I testified that no promise was ever given Taylor to give him any interest in the locations; that there never was any intention of doing so; that Taylor never had any interest in these locations. (R. 824.)

His testimony shows that they were all treated alike. The evidence shows that at the very inception of the enterprise, when securing the powers of attorney, he said to the four persons who secured the signers, that if they would aid him he would be able to recoup his losses and theirs. The testimony of the locators shows that they never considered themselves as the owners of an interest in the locations; they never made any inquiries as to what had been done as a result of the signing of the power of attorney; they took what McMurtry gave them and did none of those things which are to be expected of bona fide locators having a real interest in the claims located in their names.

As a result of these locations we find McMurtry not only receiving the larger part of the money de-

rived therefrom, but we find him personally claiming an entire quarter-section located in the names of eight of the New York locators (R. 817, 823), and also forty acres of the land in suit (R. 824).

Any scheme or device entered into whereby one individual is to acquire more than that amount (20 acres) or proportion in area constitutes a fraud upon the law, and consequently a fraud upon the government, from which the title is to be acquired, and any location made in pursuance of such a scheme or device is without legal support and void. The proposition seems to be well established. (Citing cases.)

Nome & Sinook Co. v. Snyder, 187 Fed. 385, 388.

Cook v. Klonos, 164 Fed. 529, 538.

Gird v. California Oil Co., 60 Fed. 531, 545.

United States v. Brookshire Oil Co. 242 Fed. 718, 721.

Chanslor-Canfield Midway Oil Co. v. United States, 266 Fed. 145, 150.

In an unreported case, *United States v. Owl Creek Coal Company*, et als., from the then Circuit Court of Wyoming, in the Eighth Circuit, Mr. Justice Van Devanter, at that time a circuit judge, discussed this subject very clearly in a case closely resembling the one at bar, although it was a coal case. The evidence of lack of interest on the part of the entrymen or locators was by no means as clear and

conclusive in that case as it is here. In that case the Court said:

If one residing in New York, without ever having seen coal lands in Wyoming, were to make entry of them with no knowledge or investigation as to their character or value, and were to make the entry through some agent, whose responsibility was an unknown quantity, and were to make the entry with money that did not belong to him, and without in any manner arranging so to have the money used, these would be most suspicious circumstances; and if thereafter you should find that person, within a short time, conveying the land to whoever did provide the money, that certainly would go very far towards proving that the entry was originally made for the benefit of the person advancing the money. But all things which lead to the inference, to implication, must be judged of in the light of the surroundings. * * *

I pass then to the Owl Creek entries, the ones about which most has been said in the evidence and in the argument.

The persons who made these entries are not ones to whom Mr. Alfred Sully directly made any suggestions. They are persons who were solicited by Rufus J. Ireland and by Mrs. Myton to make entries. The evidence goes far to show that these persons made the entries merely because they were so solicited; that they hardly read the applications therefor and but illy understood them; that there was at the time no arrangement respecting the payment of the purchase price, and that their motive in making

the applications was that of doing a favor for Mr. Ireland and Mrs. Myton (one or the other). Mrs. Myton advanced all moneys used in obtaining these entries. When the entries were made the Receiver's receipts and Register's patent certificates were not delivered to the entrymen. They did not know where the purchase price came from and apparently they did not care. They did not expect to be called upon to repay it. Subsequently, and within a short time, a corporation was formed for the purpose of taking over these lands. The entrymen were not consulted about this, and after it was done they were requested by Mr. Ireland and Mrs. Myton to make conveyances to the corporation and did so without questioning the right of Mr. Ireland and Mrs. Myton to make the request. They were then given three certificates of stock in the company and a very dubious sort of explanation is given as to why the stock was given to them. They were not participants in any arrangement for the issuance of the stock, but merely assented to it as one would assent to anything in which he has no real voice. Two of the stock certificates were transferred by each of them to Mr. Ireland and Mrs. Myton. None of them exercised at any time any sort of active ownership over their entries, save as they made deeds to the Owl Creek Company. None of them made any inquiries about the land and all the way through they manifested that sort of indifference to the transaction which would be shown by one who was not a real participant for his own benefit. They did not give notes for the purchase price, did not promise to repay it,

and never did repay it. All that occurred in that regard was that the corporation, after getting the lands, gave its notes to Mrs. Myton for the amount expended by her. The corporation was created and brought into existence by Mr. Ireland and Mrs. Myton, not by the entrymen. The latter have made various statements about the transaction. In their direct examination, in so far as they were examined, they said that they made the entries for the accommodation of Mr. Ireland and Mrs. Myton; that they did not know anything about the purchase price; and that the stock came to them as a surprise, as an unexpected gift. On cross-examination they answered that they made no agreement and had no understanding that they would convey the entries after the same should be perfected. Thus part of their testimony is inconsistent with the remainder. But this inconsistency does not wholly destroy their testimony. We have the unqualified admission that none of them was looking out for coal entries at all, and that none of them made any inquiries about the matter at any time, but signed whatever papers were placed before them and acted throughout in the same way that people would who were not beneficiaries and were incurring no responsibility at all. Then we have the circumstance that Mr. Ireland and Mrs. Myton would hardly have done what was done out of mere kindly interest in persons with whom they had no family ties and no such relations as naturally would cause them to proceed as they did. We therefore must look for some other motive and my view is that the evidence reasonably will support a

finding that Mr. Ireland and Mrs. Myton were to be beneficiaries of these entries. Maybe the particular manner in which they were to become the beneficiaries, whether through the instrumentality of a corporation and conveyances to it, was not specified, but the manner and means were to be such as Mr. Ireland and Mrs. Myton should name.

It is not necessary that it be shown that these locators were co-conspirators or that there was any previous agreement; nor is it necessary that it be shown that they intended that any other person secure an interest in the land itself.

In the case of *United States v. Wells*, 192 Fed. 870, 873, it is said:

It is not essential that entrymen should be co-conspirators. They may have allowed themselves to be used out of mere good nature or for compensation without any appreciation whatever of the conspiracy, if one existed.

Also *United States v. Wooley*, 262 Fed. 518, 521.

This Court, in the case of *Chanslor-Canfield Midway Oil Company v. United States*, 266 Fed. 145, 149-150, said:

* * * the locators whose names were used by Hall did not know of Hall's intended use of their names to locate the lands involved * * * We have no doubt there was no willful fraud on the part of the locators themselves; but, even so, it is perfectly plain that no one of them had any intention whatever of taking up or develop-

ing a claim upon the public lands. They were not bona fide occupants or claimants, and, although guiltless of active, positive fraud, each must be charged with a knowledge that he or she had no rights, and had no authority to make the deed to Stokes. Hall knew that the locators whose names he used refused to pay any money or to take any interest in the property, and as a consequence he acted wrongfully when he took deeds of rights which the so-called locators had acquired. No inference appears to be reasonable, except that Hall made the pretended location purely in the interests of himself, or possibly some one other than the locators themselves. (Citing *Nome & Sinook v. Snyder, supra.*)

It should be borne in mind that at the time the testimony of the various locators was taken they had been informed of the profits which McMurtry had made and realized that a large amount of money was involved. This is evidenced by a number of letters passing between two of the locators on the land in suit,—Herbert M. Walker of New York and H. E. Bashore of Harrisburg, Pennsylvania. In a letter of September 29, 1916, written by Walker to Bashore, he stated: “It appears as though McMurtry and Thickers need us again regarding the property *we located for them* in California.” (R. 680.) (Italics ours.) Bashore, in his letter to Walker of October 1, 1916, stated: “At that time I signed that last paper sent me I was suspicious and if you remember I wrote Fred on the subject but *when you get something for nothing* there was not much use

putting up a fight so I fell in line with the rest of you boys." (R. 682.) (Italics ours.) In this correspondence Walker represented that he spoke in addition to himself for Mahr, Metz, Keenan (locators here), Wilson and Farrell. In his letter of October 2, 1916, Walker said, "We have been in touch with eight of the locators" (R. 684); and in his letter of October 30, 1916, to Bashore he states that he and Mahr represent ten locators (R. 688).

The testimony of the locators was taken in the spring of 1917. The testimony of many of them, considered in the light of the correspondence passing between Walker and Bashore in the fall of 1916 (R. 640 to 659), shows that they were influenced by the information that a large amount of money was involved.

While it is undoubtedly true, as a general rule, that a party offering a witness in support of his case represents him as worthy of belief, and will not be permitted to impeach his general reputation for truth, or impugn his credibility by general evidence, he has never been considered as bound by his general statements as to motives or intention, or his bona fides in a particular transaction, but may draw any inference from his testimony which the facts stated by the witness seem to justify. Particularly is this true where the party is compelled to prove his case from the mouth of the opposite party, who may be presumed to be hostile to him.

McLean v. Clark, 31 Fed. 501, 504.

In the case of *Booth-Kelly Lumber Co. v. United States*, 231 U. S. 481, 59 L. Ed. 1058, the various persons used as “dummies” gave explanations of their conduct, as they did in the case at bar but it was held by the Court that actions spoke louder than words. It was a case to set aside a patent, in which it would seem that a stricter rule would be applied requiring the establishment of a fraud than in a case like the one at bar. It was there said:

Booth and Ethel La Raut, now Mrs. Lewis, meet the inference naturally to be drawn from the facts thus far stated, by testifying that it was agreed between them that Booth would get timber claims for her and the other three, carrying them, and advance the money necessary until they were able to dispose of the property,—which would seem to imply that they bought the land for speculation, contrary to their affidavits, but of course denies that they bought for the company. Both Ethel and Lucy La Raut were called by the government and both asserted that they bought for themselves, that they still owned the land, and that their deeds were executed only as security for the advances that the company had made, and there is some corroboration of Booth as to details, but the evidence for the defendants is overborne by the whole course of what was done.

Booth-Kelly Lumber Co. v. United States,
231 U. S. 481. 486; 59 L. Ed. 1058, 1060.

It is true that McMurtry in dealing with others with reference to the property did so in the names

of the locators, so that all transactions have the appearance of having been made by the locators. But this is a case where the substance of the transaction was different from its form and in which the form was adopted in an attempt at outward compliance with the law and a showing of the utmost good faith. In such circumstances it is neither unnatural nor unusual that under an attack the participants should later persuade themselves that the form was in fact the substance, but in seeking to ascertain now what was then substance and what was merely form, the present declarations of the parties are far less significant than are their words and acts during the progress of the transaction itself.

Graffam v. Burgess, 117 U. S. 180, 186, 29 L. Ed. 839, 841.

The Court found that the powers of attorney were made in good faith but that McMurtry's conduct thereafter was such as to constitute a violation of his trust. With great respect to the learned judge, it is submitted that there is no evidence to sustain this conclusion. These locators were all intelligent men, some of them professional men, all of them men of at least average experience and intelligence. Yet they were found signing without question and without hesitation the \$250 checks which contained the typewritten matter heretofore referred to. They not only signed the checks referred to, but signed each and every other paper presented to them without inquiry and without investigation, or without

information of any kind as to what had been done under the power of attorney. None of their acts at, prior and subsequent to these locations are consistent with the theory that they acted wholly in their own interest. On the contrary, all of their acts show that they allowed themselves to be used out of mere good nature or in the hope of some compensation.

McMurtry never acknowledged himself as trustee for the locators, and never treated the locators as having any interest or control in the property. He did nothing to indicate that he was not acting wholly for himself and his associates. His previous efforts in this same oil field in various enterprises, together with what his idea of what a bona fide locator was up to 1916, show that he was fully aware of what he was doing when he secured the power of attorney from the New York locators. As he testified, referring to one of the locators:

No promise was ever given Taylor to give him any interest in the locations; that there never was any intention of doing so; that Taylor never had any interest in these locations. (R. 824.)

Taylor was in no different position than any of the others. It is submitted, therefore, the locators not having any intention in the first instance to acquire the entire interest in the public lands that might be located in their names, the New York locators were mere instruments for the purpose of

carrying out the scheme which McMurtry had in mind. Under such circumstances there could not have been the relationship of principal and agent, and therefore McMurtry could not have violated any trust.

The validity of the locations made in the names of the eight locators involved here, as well as of the other New York locators, has been before the Department of the Interior in connection with mineral applications for patent. Most of the testimony before the Court here was before the Secretary of the Interior in that matter. The Secretary of the Interior, after reviewing the testimony, found that the locations were not made for the use and benefit of the persons whose names were used as locators. A copy of the opinion of the Secretary of the Interior referred to is attached to this brief as an appendix. Although the decisions in the Land Department on matters of law are not binding on the Courts, yet on questions relating to the public land they are entitled to great respect.

Hastings and D. R. Co. v. Whitney, 132 U. S. 357, 33 L. Ed. 363.

Knight v. United Land Association, 142 U. S. 182, 35 L. Ed. 981.

Spokane Falls & N. Ry. Co. v. Ziegler, 61 Fed. 392.

II.

THE LOCATION WAS MADE FOR THE USE AND BENEFIT OF THE CALIFORNIA MIDWAY OIL COMPANY AND TO ENABLE McMURTRY TO CONSUMMATE A PREVIOUS CONTRACT MADE BY HIM AS ATTORNEY IN FACT FOR THE CHICAGO LOCATORS UNDER WHICH THE CALIFORNIA MIDWAY OIL COMPANY AT THE DATE OF LOCATION WAS IN POSSESSION OF AND CLAIMING SIXTY ACRES OF THE LAND.

The Court held that the location upon the land in suit was not for the purpose of enabling McMurtry to consummate a previous contract made by him as attorney in fact for the Chicago locators, that is, that it was not for the benefit of the California Midway Oil Company (259 Fed. 343, 355).

McMurtry had, in October, 1908, acting under his power of attorney, entered into an agreement with Mrs. McLeod. Under the terms of that agreement Mrs. McLeod was to have one-half of the quarter section. It was subsequently modified so that she was to have only sixty acres. As to this sixty acres, the California Midway Oil Company had succeeded to her interest some time in November, 1908 (Plaintiff's Exhibits 39 and 40; R. 902). In December lumber and other material was placed on the land preparatory to beginning active operations. A superintendent was in charge and other men were employed (R. 763).

J. M. McLeod, an officer of the California Midway Oil Company, and for whom Mrs. McLeod acted in entering into the agreement of October, 1908, was advised of the so-called defects in the Chicago locations by McMurtry shortly after he learned of them. Not only did he advise McLeod of the defects, but he told him that he would remedy the same, or that the matter would be adjusted satisfactorily. The Court found that McMurtry did not advise McLeod how he was going to remedy the defects, and in substance held that in view of the fact that McMurtry had decided to abandon the former locations on December 31, 1908, and make new locations on January 1, 1909, without the knowledge of either the California Midway Oil Company or McLeod, such a location was bona fide and not made in the interest of the California Midway Oil Company (259 Fed. 343, 354-355).

But it is submitted it is immaterial whether McLeod or the California Midway Oil Company knew of how the matter would be adjusted, if in fact the new location was made on behalf of the California Midway Oil Company. It is clear that McLeod, the representative of the California Midway Oil Company, knew of the defects and was told by McMurtry that he would remedy the same. McLeod relied on McMurtry to do this. The matter was remedied by making a new location January 1, 1909, and a few days later a new agreement was entered into between the parties, followed by the agreement and deed of May 17, 1909 (Plaintiff's Ex. 33 & 34, R. 895,

899), leaving the California Midway Oil Company in the same situation it had been in under the agreement of October, 1908, as modified in November, 1908. The making of the location January 1, 1909, did not make the slightest difference in the situation as to the California Midway Oil Company; it merely necessitated the making of a new agreement in the names of the new locators. McLeod, the representative of the California Midway Oil Company, referring to the situation as to the so-called defects, testified:

I wanted it fixed up, as we had already started to carry out that contract of October 8, 1908.
 * * * Yes, as I then understood it, the locations would be practically worthless if we could not straighten them out. But I had in mind that McMurtry would correct these faults, and I looked to him to do so, so that I might have *my rights under the contract of October 8, 1908.* (R. 869.) (*Italics ours.*)

George Grant Gillette, a director of the California Midway Oil Company, testified:

I don't think we had anything different after January 1, 1909, from what we had before, that is, what we claimed while I was with the Company. The posting of these new notices on January 1, 1909, did not interrupt or interfere with our work. (R. 863.)

Frederick V. Gordon and W. C. Price, who were interested with McLeod in the transaction by which the California Midway secured its rights in the

tract, testified along the same lines (R. 865, 866). Not only did McMurtry assure McLeod that he would be protected and the situation growing out of the so-called defects remedied, but he testified that when he made the location after January 1, 1909, he intended to make a new contract covering the property. Obviously, if he relocated the land a new agreement had to be made; but the "rights" of McLeod and of the California Midway Oil Company remained the same after January 1, 1909. With reference to his intentions, McMurtry testified:

Q. The time you relocated the land with the New York locators on January 1, 1909, did you intend to abrogate the contract of October, 1908, and thereby deprive Mr. McLeod and his associates from the rights which had accrued to them under the contract of October, 1908?

A. I intended to permit the locations made in 1907 to lapse on the 31st day of December, 1908; to relocate the 1st of January, 1909, with these so-called New York locators and make a new contract with J. M. McLeod. (R. 790.)

We find therefore that the land in suit was located on January 1, 1909, in the names of the New York locators, and that the California Midway Oil Company, which was claiming sixty acres in the quarter section, remained in possession under an agreement which gave them what they had prior to January 1, 1909, under the agreement of October, 1908, as amended in November, 1908. McMurtry frankly states that he intended to protect the rights

existing prior to January 1, 1909, when he made the location of that date. The California Midway Oil Company was thus enabled to secure sixty acres by a single location when as a single person it could under the law secure only twenty acres by a single location. This it is submitted was a fraudulent use of the power of attorney. In the well known and often cited case of *Gird v. California Oil Company, supra*, the facts as to the making of the location there in question were very similar to the facts here. It was there said:

But, as already observed, I think the evidence shows that Irland, Bradfield, Henley, and Thompson were, in truth, all acting for the defendant company at the time of the location of the Razzle Dazzle claim, and therefore that the location should be considered and treated, not as made by the three individuals, Bradfield, Henley, and Thompson, but as made for and in the interest of the defendant company, and must, under the provision cited, be limited in amount to 20 acres of land. (60 Fed. 531, 545.)

III.

BONA FIDE PURCHASER.

The Court found that the defendants California Midway Oil Company and Associated Oil Company acted in the utmost good faith both in acquiring and purchasing the locators' interests and paying therefor without any notice, knowledge or suspicion that there was or could be any question about the bona fides thereof, and held that while this would not be

a defense that fact may be considered in a suit to set aside the locations (259 Fed. 343, 351).

The defendants named were bound to know, however, that they were purchasing only an equitable title. It is well settled that where a purchaser buys an equitable title only he derives no better title than his predecessor had, whatever value he may have paid, however ignorant he may have been of the facts or law invalidating the locations, or however great his good faith in making the purchase.

Whoever buys from the entryman, holding no patent, but only a final certificate, buys charged with knowledge of the law that the government has authority, for proper cause, to cancel the final certificate. The entryman can convey no greater right than he has. It cannot be that, although the government retained the right, for cause, to cancel the certificate as against the entryman, this power and right could be defeated by a mere transfer of his claim by the entryman to a third party. The certificate having been canceled, the equitable title of the entryman or his transferee no longer exists. A transferee of an entryman, who purchases before the issuance of the patent, the entry being subsequently canceled, does not occupy the position of a bona fide purchaser. It is so decided in *Hawley v. Diller*, 178 U. S. 476, the reasons being stated and many authorities cited on pages 484 to 488, inclusive, 20 Sup. Ct. 986, 44 L. Ed. 1157. We find no decision of the Supreme Court in conflict with this view.

United States v. Kennedy, 206 Fed. 47, 49.
(C. C. A., 5th Circuit.)

The plaintiff, therefore, is constrained to contend that, although the entrywoman may have lost her rights, and be without remedy in the District Court, it is entitled to protection as a bona fide purchaser for value without notice.

We cannot see how the plaintiff, as the vendee of Susie L. Wellborn, can have any better title than she had. It must be remembered that throughout these transactions the government had, and now has, the legal title to the land as matter of law, and that the plaintiff, purchasing from one who holds, not a patent, but a final certificate, was chargeable with notice that the legal title was in the government, and that the certificate, for cause, was subject to cancellation.

Moses v. Long-Bell Lumber Co., 206 Fed. 51, 54-55.

In these cases the case of *United States v. Detroit Lumber Company*, 200 U. S. 321, which is cited by the Court in its opinion, is clearly distinguished.

In the *Kennedy* case, *supra*, it was said at page 50:

It is a general doctrine of equity that one who purchases from a vendor who has only an equitable title, and who is chargeable with notice that another holds the legal title, takes only such rights as his vendor had, and cannot defend against the holder of the legal title as a bona fide purchaser. It is not in conflict with, but confirmatory of, this rule to hold, as was held in the *Detroit Lumber Company* case, *supra*, and in *United States v. Clark*, 200 U. S.

601, 607, 26 Sup. Ct. 340, 50 L. Ed. 613, that one who purchases from an entryman holding a certificate that carries only an equitable title, but who, subsequent to such purchase, obtains a patent conveying the legal title, may defend as a bona fide purchaser, because, by the doctrine of relation, the title is treated as taking effect at the date of the entry.

Judge Rudkin, at the hearing of the *Honolulu* case, in a remark contained only in the reporter's transcript, said:

I never have understood that a purchaser who bought an equitable title acquired any better rights than the venor. I supposed that was the universal rule of equitable jurisprudence. (Report, pp. 114, 116.)

At the hearing before the House Committee on Public Lands, 65th Congress, Second Session, Commissioner Tallman was asked as to the attitude of the Department upon this point, and said:

As a matter of law and as a legal proposition, we consider that a location is valid or invalid depending on whether or not there was a locator with or without interest. It does not make any difference how many people were innocent purchasers, because that is no defense. There is no such thing under the law as an innocent purchaser of an unpatented mining claim. Consequently we do not pay any attention to the fact of how honest the purchasers were or how little they had to do with the dummy part of it. (P. 1201.)

MR. SINNOTT. Is it your position that there is no bona fide occupant of a location which had its inception in a dummy entry?

MR. TALLMAN. I would say, yes, if I correctly understood your question.

MR. SINNOTT. There could not be?

MR. TALLMAN. I should say there could not be.

MR. SINNOTT. No matter how many transfers there had been of the original entry to innocent purchasers?

MR. TALLMAN. Yes, sir; that would not help the situation at all.

MR. SINNOTT. The purchaser buys at his peril, and the doctrine of caveat emptor applies?

MR. TALLMAN. Very much so.

MR. SINNOTT. And the courts have held that?

MR. TALLMAN. Yes, sir; I think so, and the department held it repeatedly. The only way in which the courts have ever verged off from that general proposition has been to hold that if by any chance the patent issued before the claim is attacked, that might change the situation as to the innocent purchasers before patent. (P. 1244.)

The last reference by Mr. Tallman is of course to show wherein the doctrine of the *Detroit Lumber*

Company case might apply, as pointed out by the Circuit Court of Appeals for the Fifth Circuit in the cases above cited.

Respectfully submitted,

RAYMOND BENJAMIN,

CHARLES D. HAMEL,

Special Assistants to the Attorney General,

Solicitors for Appellant.

APPENDIX

DEPARTMENT OF THE INTERIOR.

Washington, October 15, 1920.

A-242

United States	Involving Visalia mineral application 03428, and mineral entry 04655. Decision reversed. Application and entry rejected and canceled.
vs.	
J. M. McLeod, et al.	

APPEAL FROM DISTRICT LAND OFFICE.

Mineral application 03428 was filed November 17, 1911, by J. M. McLeod, for the Michigan placer, embracing the SW $\frac{1}{4}$ Sec. 28, T. 31 S., R. 23 E., M. D. M.

Mineral entry 04655 was made October 31, 1914, by J. M. McLeod, for the Texas placer, embracing the NW $\frac{1}{4}$, the Ohio placer, embracing the NE $\frac{1}{4}$, and the Wisconsin placer, embracing the SE $\frac{1}{4}$ of said Sec. 28, under application filed June 18, 1914, title being based upon possessory right, under Sec. 2332 of the Revised Statutes, no abstract of title being filed in 04655.

All of the above-described lands were withdrawn September 27, 1909, by the Secretary of the Interior, pending legislation, and included in Petroleum Reserve No. 2, Executive Order of July 2,

1910, and also included in Naval Petroleum Reserve No. 2, Executive Order of December 13, 1911.

By your office letter "FS" of January 5, 1916, adverse proceedings were directed in 04655, upon charges alleging no discovery of oil or gas, at date of withdrawal, and lack of diligent prosecution of work leading to discovery on any of the claims applied for, it being also charged that the locations were fraudulently made. By your office letter "FS" of August 16, 1916, adverse proceedings were directed in 03428, alleging fraudulent location of claim only.

July 12, 1918, the United States Attorney General transmitted to your office, copies of protests and requests for hearings, filed in Visalia office, on behalf of the Secretary of the Navy, in these cases, alleging no discovery of mineral at date of the withdrawal; lack of diligent prosecution of work leading to discovery, and fraudulent locations, in both cases. In order to avoid having two actions, involving substantially the same subject matter, the proceedings, ordered theretofore by your office, were suspended by letters "FS" of August 12, 1918, and you were directed to issue new notices to the claimants, and the then occupants of the land, viz., Consolidated Mutual Oil Company, Standard Oil Company, Columbus Midway Oil Company, Record Oil Company, and Caribou Oil Mining Company.

Answers were timely filed, and the issues being joined hearing was duly had, whereupon on June

14, 1920, decision was rendered in favor of the applicants.

From this decision, the Government, acting through the Navy Department represented by the Attorney General, has appealed. At the request of Mr. H. F. May, Special Assistant to the Attorney General, oral hearing was ordered before the Secretary of the Interior and the Commissioner of the General Land Office jointly, for the purpose of expediting the final disposition of the case; said hearing commenced on August 17, 1920, the Government being represented by Mr. H. F. May and Mr. C. D. Hamel, Special Assistants to the Attorney General, and the Applicants by Mr. Charles S. Wheeler.

COURT PROCEEDINGS.

At this point it may be well to summarize briefly various proceedings which have been had in the courts affecting or having a bearing on the issues in this case.

It appears that suits were started in the District Court, Southern District of California, numbered A-41, 42, and 43, U. S. vs. Record Oil Company, et al; same vs. Consolidated Mutual Oil Co., et al; same vs. Caribou Oil Co., et al. These three suits attached the NE $\frac{1}{4}$, NW $\frac{1}{4}$, and SE $\frac{1}{4}$ of Sec. 28. In these suits Judge Bean ordered the appointment of a Receiver. Thereafter appeal was taken by the Consolidated Mutual Oil Co. and J. M. McLeod, in two of these suits, to the Circuit Court of Appeals,

9th Circuit (Nos. 2787, 2788), affecting the NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ of said Sec. 28. Decision was rendered by the Circuit Court of Appeals on this appeal from the order appointing a Receiver, on October 8, 1917 (245 Fed., 521). The order of the District Court was reversed with dissenting opinion by Judge Gilbert. In this case the Circuit Court of Appeals, basing its action on the affidavits and other evidence submitted for and against the appointment of a Receiver, held that the facts showed that the defendants were in diligent prosecution of work leading to discovery at the date of the withdrawal.

But prior to the rendering of decision by the Circuit Court of Appeals on the order appointing a Receiver, as above stated, the District Court had proceeded to try the case on the merits, as a result of which decision was rendered on June 8, 1917 (242 Fed., 746). While apparently full testimony was taken on the merits, the three suits A-41-42-43 were dismissed, entirely on the ground of jurisdiction, by reason of the fact that an application for patent was pending, the court saying that the bills were framed on the theory that the merits of the case could be tried in the courts. Later on, it appears, this order was modified to the extent of dismissing the bills without prejudice.

There are two other court decisions involving the question of validity of the McMurtry locations, but not involving any part of Sec. 28, viz., United States

vs. Thirty-two Oil Company, et al, in the U. S. District Court, Southern District of California, No. A-38, reported in 242 Fed., 730, and United States vs. California Midway Oil Company, et al, same court, No. B-10, reported in 259 Fed., 343.

The first of these cases involved the NE $\frac{1}{4}$, Sec. 32, T. 31, R. 25. The Government attacked the locations on the grounds of "dummy" locators and absence of diligence at date of withdrawal. The court decided the case in favor of the government entirely on the ground of diligence, but, with respect to the bona fides of the McMurtry locations, remarked that

"It is claimed by the Government that the paper locations by McMurtry in 1907 and 1908, were not made by him for the benefit of the alleged locators, but for himself and others, and were therefore fraud on the mining law and void. I am disposed to believe there is merit in this contention. Indeed there can be no question from the evidence but what the alleged locations made in 1909 were not for the use and benefit of the named locators but to enable McMurtry to consummate and carry out the previous contract made by him with McLeod and others for the disposition of the property as heretofore stated."

The second of these two cases, i. e., United States vs. California Midway Oil Company, involves the NW $\frac{1}{4}$ Sec., 32, 31-23. Decision in this case was based entirely on the question of the bona fides of the McMurtry locations, and is the principal case relied upon by the defendants on this subject. In

this case, Judge Bean prepared an extensive summary of the testimony of all locators as well as others. After reviewing all this testimony, Judge Bean held that the locators were not "dummies".

There is another court case, which has been frequently referred to in the record but which is not reported, probably not decided, but in which evidence was taken. This case was started in the Superior Court of the City and County of San Francisco, and is a suit by Taylor, one of the locators, against McMurtry, in which Taylor seeks to procure an accounting of the proceeds of sales of mining claims by McMurtry.

Stipulations as to evidence taken in the court cases.

Pursuant to stipulations between the attorneys for the parties in this case, the cases affecting Sec. 28 were consolidated for trial, and the following evidence taken in the court cases above referred to, was stipulated into and made a part of the record herein, viz.;

Transcript of evidence taken in United States vs. Record Oil Co., et al, A-41-42-43, in so far as such evidence related to development history;

Testimony of L. B. McMurtry taken in the Fall of 1916 in the case of United States vs. Thirty-two Oil Co., in Equity A-38;

Testimony of L. B. McMurtry and three other witnesses, taken in March, 1919, in the case of

United States vs. California Midway Oil Company, et al, Equity B-10;

The evidence taken by depositions in the case of United States vs. Union Oil Co., J. M. McLeod, et al, same court, Equity A-70, etc., consisting of nine volumes; apparently this testimony was also stipulated in the record in case of United States vs. California Midway Oil Company, Equity B-10;

Copies of affidavits on behalf of Plaintiffs and Defendants submitted in the case of United States vs. Consolidated Mutual Oil Co., et al, Equity A-41, for and against the appointment of a Receiver, the same constituting the same affidavits later before the Circuit Court of Appeals on appeal, as above stated.

Issues.

As will appear from the foregoing, it is charged (a) that as to all four quarters of Section 28, the placer mining locations were illegal and void because of fraud in that the locators did not make the locations in good faith for their own use and benefit but to enable L. B. McMurtry, by this device, to procure a greater area of land in each location than the law permits, and (b) that as to the NW $\frac{1}{4}$, NE $\frac{1}{4}$, and the SE $\frac{1}{4}$ of said section 28, the claimants and their predecessors in interest had made no discovery of mineral prior to the withdrawal of September 27, 1909, and were not, on that date, in diligent prosecution of work leading to discovery

on said quarter sections. It is admitted by the government that diligent work was in progress on the SW $\frac{1}{4}$ at the date of the withdrawal.

Bona Fides.

The four claims covering said Section 28 were located January 1, 1909, in the names of thirty-two persons, by one L. B. McMurtry, as attorney-in-fact, under powers of attorney secured in New York by F. H. Searles, C. W. Thorn, E. L. Powell and J. B. Thickers, at the request of McMurtry; the powers of attorney were dated as of December 21, 1907. These locators are referred to in the record as the "New York Locators" as distinguished from the "Chicago Locators," referred to in the next paragraph.

Prior to the locations referred to in the last preceding paragraph, the SE $\frac{1}{4}$, SW $\frac{1}{4}$; S $\frac{1}{2}$, SE $\frac{1}{4}$; NW $\frac{1}{4}$, SE $\frac{1}{4}$, and N $\frac{1}{2}$ N $\frac{1}{2}$ Sec. 28 had been located in January, 1907, in the names of parties known as the "Chicago locators," by McMurtry as their attorney-in-fact. The signatures of these parties were secured on two powers of attorney made on December 21, 1903. McMurtry instructed one A. Shadbourne to secure these powers of attorney. Shadbourne was associated with McMurtry in selling stock of the Oriental Oil Company at the time, in Chicago, and he approached one C. A. Dunbar, employed at the Chicago Stock Yards, in regard to securing the signatures. Dunbar, with the aid of a notary public, also employed at the yards, secured

the signatures without any difficulty. Fourteen of the Chicago locators testified that they did not remember signing the power of attorney, or did not know the significance thereof, and had no knowledge of the locations made in their name, or of McMurtry, until approached in the matter by a special agent of this office in the summer of 1916. McMurtry testified that in 1908 he learned that one Stratton was holding the property in Sec. 28, located by the Chicago locators, and that Stratton convinced him that the assessment work had been done on the property, or that it was not open to location, at which time he gave him a deed to the tracts, in order to clear his title, without any consideration.

It appears that the principal reason why McMurtry relocated the same land, or substantially so, in the names of the New York locators on January 1, 1909, was because he had become convinced that the locations in the names of the Chicago locators were defective, and that the only way the defect could be cured was by relocation. The conveyance to Stratton, above related, should be distinguished from the conveyance to Stratton of the New York location on the same land, related in the next paragraph.

February 1, 1909, McMurtry, in the names of the New York locators, conveyed the entire section 28 to H. C. Stratton, for the alleged consideration of board and lodging given by Stratton to McMurtry and four or six parties associated with McMurtry at a camp in the vicinity for some months, chiefly

in 1908. June 17, 1909, Stratton conveyed the entire section to J. M. McLeod, the applicant for patent.

As hereinabove stated, McMurtry located this section 28 and numerous other sections by the use of four powers of attorney, each executed by eight persons residing in New York City and vicinity. These powers of attorney authorized the attorney-in-fact to locate and convey for the benefit of the locators. The powers of attorney were procured by friends and former associates of McMurtry in another company which had been a failure and in which the associates had lost money. McMurtry proceeded with the powers of attorney to locate many quarter sections and to make various deals for their sale or development. Some of these transactions involved a very large money consideration, particularly that with the Associated Oil Company. Eventually McMurtry transferred all of the contracts and other assets which he had procured in the names of the locators to the Pacific Oil Lands Company, incorporated for a million shares, par value \$1.00; the locators received 1,000 shares each; McMurtry and his immediate associates in California received all the balance. Prior to the transfer of said assets to the Pacific Oil Lands Company, the locators had received \$250 each cash or some other stock as their alleged portion of the proceeds of a certain sale, and after the transfer to the company they each received what purported to be a \$20.00 dividend declared by the Pacific Oil Lands Com-

pany; a little later their stock in the Pacific Oil Lands Company or other stock was taken up by McMurtry, for which each received \$250. We have, therefore, a transaction whereby various properties were located in the names of thirty-two locators by McMurtry in full and absolute control of all operations and business transactions, with the result that McMurtry and his immediate associates received hundreds of thousands of dollars, of which they gave to the locators \$520 each.

On this state of facts much litigation has been predicated, as same involves the validity of the title to oil lands now of great value. The questions presented are were the locations bona fide or not.

So far as McMurtry is concerned, the testimony shows that it is an indisputable fact that he never intended that these locators should be anything more than "dummies" to further his operations, the same as the Chicago locators had been, whose personal activities in the matter began and ended with the signing of their names to the powers of attorney. Having gotten the signatures of the New York locators, he considered them, at the time, as having no actual interest, and that their personal activities had ceased, so far as he was concerned.

His testimony in the case of Taylor vs. McMurtry clearly shows this to be the fact. In that case he stated that his idea of a "dummy" locator

"Is a man who receives pay to sign a document or a power of attorney to permit you to

locate land prior to your making a location, or a person who does not exist;”

that the pay is to be received before the location is made. Being requested to tell the truth in regard to the locators, McMurtry stated:

“Mr. Taylor is an absolute dummy if there ever was one in an oil case.”

Q. What do you mean by that?

A. I mean this: That there never was any promise given to Mr. Taylor to give him any interest in this property, neither was there ever any intention of doing so.

And again:

Q. You mean by that that Mr. Taylor never had any interest in these locations?

A. Mr. Taylor, when he signed that power of attorney, never expected to have any * * *. No representations had been made to the four men who secured these powers of attorney from Mr. Taylor. No representations had been ever made to these four men to promise any locator anything at any time.

And,

A. There never was any promise made to Mr. Taylor either directly or indirectly. The only thing regarding this was that J. B. Thickers, F. H. Searles, Edwin L. Powell and C. W. Thorn were in my room on Forty-fourth Street and I asked them if they could get thirty-two locators for me

to locate some land in San Benito County. We had been discussing the debts of the Empire Oil and Development Company and Mr. Searles advanced \$6,000, perhaps over, and I made this statement: That if the San Benito proves to be oil land, we will make some money out of it. That is all the conversation so far as I know. What representations these four men may have made to the parties who signed the power of attorney I do not know.

In view of this and other testimony there can be no other inference but that McMurtry made the locations for his, and a few of his associates' benefit and interest, and that such was the purpose continuously from the time the powers of attorney were secured is shown by the testimony as a whole.

Had it not been for the fact that McMurtry was compelled by the exigencies of the deal with the Associated Oil Company to go back to the locators and procure their ratification of the transaction, probably they would never have heard any more of it, or even gotten any money out of it.

As for the parties whose names were used to locate the lands, the name of one of them—Wellington S. Christman, whose Christian or given name had been signed as William—was forged in the power of attorney and fraudulently acknowledged by his nephew, John B. Thickens. Christman, who resides at Clinton, Michigan, later signed the ratification as William, after Thickens had written, telegraphed and finally traveled from New York to Clinton,

Michigan. Christman did this for his nephew's sake and declared that he would not have gone into it for any other man living. He denied having any intention of locating for his own use or benefit any lands, and claimed no interest.

Few of the parties who signed the powers of attorney were aware of the significance of their act. They signed the powers of attorney and apparently forgot about the matter, until they were called upon to ratify the acts of McMurtry and then received the first \$250, which was wholly unlooked for. Not until long after they had conveyed away their rights, titles and interests were they aware of the manner in which their names had been used, and they would still be in the dark if the title to the lands had not been attacked.

The parties did not meet or in any manner discuss the matter of locating the lands and the appointment of an agent, or for any other reason prior or subsequent to signing the power of attorney. They, the so-called principals, had no say-so in the matter. They never questioned why or wherefore they were given the money they received, but were as a whole, elated to receive it, because they considered that they had received something for nothing, and never made any inquiry as to what McMurtry had done or was doing, and took none of the steps which men who have an interest take in any business matter.

At the time the testimony of the various parties, named as locators, was taken, which is filed in this

case, and which Judge Bean summarized, the parties had been informed of the profits of McMurtry and associates, and realized that something was at stake, as evidenced by a number of letters between two of the locators, one of which, dated September 29, 1916, from H. M. Walker of New York to H. E. Bashore of Harrison, Pennsylvania, is quoted as follows:

“I do not know whether this letter will reach you or not, but am taking a chance.

It appears as though McMurtry and Thickers need us again regarding the property we located for them in California. There is a lawyer on from California now who has been in to see us all. As near as we can find out this property has been purchased by the Standard Oil Company, and the Government is bringing suit against either the Standard Oil Company or McMurtry to get the property back as government lands again.

The property was sold for a very large sum and where we did get a few dollars out of it we are of the opinion here that if we do hold out we could get quite a sum.

None of us here are going to do anything to further the interest of McMurtry in this transaction and are going to hold out to see the outcome of same. We believe that if we do we might get a nice bunch of money out of the property or if we do not get it the Government will get the land back, and as the Standard Oil are interested in it, it appears as though we might be able to do something.

They need all of the locators as we understand it, and we do not know whether you have heard anything recently regarding this matter or not, but if you get this letter kindly write me and we will post you as to what we know."

The statement that the property was located for McMurtry and his associates, clearly indicates what was in the minds of the so-called locators as late as September 29, 1916.

In answer to this letter, Bashore, on October 1, 1916, wrote Walker in part as follows:

"At the time I signed that last paper sent me I was suspicious and if you remember I wrote Fred on the subject, but when you get something for nothing there was not much use putting up a fight, so I fell in line with the rest of you boys."

The acts of the locators show that they never really considered themselves the owner of part interests in the locations, in fact they knew nothing about what was going on. They were informed that no expense, on their part, would be incurred by signing the power of attorney, and as they stood to lose nothing, they were not interested enough to investigate the matter.

In addition to the locations made in behalf of McMurtry and his associates, other persons were privileged by McMurtry to use the names of the New York parties, without their knowledge or consent. The testimony of Sue Greenleaf, one of the

privileged persons, shows the total lack of any check on McMurtry by the New York parties.

She testified that she located thirty-two claims for her benefit in the names of the New York parties, the names being signed by her in the location notice; that she had intended to locate the lands in the names of her relatives; that McMurtry advised her to have nothing to do with her relatives, as they might question her; that he had the power of attorney to act for certain New York people, and that she could use the names, and he would give her a quitclaim deed, which he did, without any consideration passing; that McMurtry told her she would have to develop the lands at her own expense, and in the event of any results therefrom, the New York parties were to have an interest which was to be a nominal sum, whatever she cared to give, one of the parties agreeing to take \$250 for his interest, while the others probably would not want anything.

Much importance by the applicant is attached to the opinion of Judge Bean in *United States v. California Midway Oil Company*, which I have read with great interest. Judge Bean attaches importance to the fact that McMurtry in July, 1910, acknowledged, notwithstanding previous conveyances made by and to him, that the property was in fact held in trust for the locators, and was willing to execute and have executed declarations to that effect. The learned judge wholly overlooks the fact that this acknowledgment was not to the locators or

for their benefit, and the fact of his attitude in that respect was not brought to the attention of the locators. It was wholly self-serving. He never acknowledged to any of the locators that he was trustee—on the contrary, definitely controverted the claim made by some of them after the matter was in litigation. The learned judge also states:

In making the locations and subsequent contracts, the fair conclusion from the evidence, in my judgment, is that McMurtry was acting for and on behalf of his principals and with no intention at that time of fraudulently acquiring the land or the proceeds thereof for himself, and it was not until it became apparent that a large sum of money could be realized from the transaction that his avarice or cupidity seems to have caused him to appropriate to his own use the bulk thereof without accounting to his principals, and in violation of his trust.

With great respect for the learned judge, I find no evidence to sustain this conclusion. McMurtry never acknowledged himself as trustee, never treated the alleged principals as having any interest or control over the property except the slight recognition which he gave them when he returned to them for a ratification, and never consulted them, never advised them of what he had done—indeed, did nothing to indicate that he was not acting wholly for himself and associates. Nor is it true that McMurtry was false to his trust, for the very excellent reason that he regarded himself always as principal and the locators as having signed the powers of attorney

merely for the convenience of himself and his associates. The evidence, instead of sustaining the conclusion of Judge Bean, shows that McMurtry had been engaged in other oil enterprises; that he had obtained money in New York by the sale of stock; that his enterprises had failed and he went to New York to the four persons whom he used in securing the powers of attorney, and in effect said to them, that if they would aid him in this regard he would be able to recoup his losses and theirs. And counsel for the applicant in cross-examining McMurtry was at great pains to show that after McMurtry had made the very large sums which came to him from the use of the names of the New York locators, he returned to New York and refunded to every one of the persons who had bought stock in his previous enterprises the money, probably with interest, which they had lost through him. McMurtry, on the contrary, was consistent and testified in terms that he kept the money for himself and associates as of right, since they did all the work, while the locators did nothing but spend a few moments signing their names, and got all they were entitled to, and that he regarded himself as the principal, and the locators as only a necessary convenience, is plain.

The testimony and the briefs have been carefully considered, and after mature consideration it is held that the locations are dummy in character, not having been made for the use and benefit of the persons whose names were used as locators, but for the sole use and benefit of McMurtry and his asso-

ciates, and constitute a fraud upon the Government (*United States v. Brookshire Oil Company*, 242 Fed., 718, and cases there cited).

In view of this conclusion the question of diligence requires no consideration. The decision is therefore reversed, and the locations made in the name of the New York parties held to be null and void. Mineral application 03428 is hereby rejected and the mineral entry 04655 canceled.

(Signed) Payne,
Secretary.

No. 3682.

IN THE
United States
Circuit Court of Appeals,
FOR THE NINTH CIRCUIT.

United States of America,
Appellant,

vs.

California Midway Oil Company, Co-
lumbus Midway Oil Company,
Thirty-Two Oil Company, L. B.
McMurtry, J. M. McLeod, and
Standard Oil Company,
Appellees.

BRIEF OF APPELLEES.

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F. D. MONCKTON,
CLERK

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(Note:—Figures in parentheses refer to record pages.)

I.

STATEMENT OF THE CASE.

As the portion of appellant's brief styled "Statement of the Case" does not comply with rule 24 of this Court in that it does not state the questions to be decided or how they arise; and as appellees cannot agree therewith, they deem it necessary to make herein a statement of the case.

This is an appeal from a decree dismissing a bill in equity filed by appellant for a decree (a) that title to the N. W. $\frac{1}{4}$ of Sec. 32, Tp. 31 S., R. 22 E., M. D. M. (unpatented) is vested in appellant free and clear of all claims of appellees; (b) that appellees be perpetually enjoined from holding possession of said land and operating it for oil; (c) that a receiver be appointed; (d) that appellees account for all oil and gas removed from the land prior to filing of the bill; (e) for damages for trespass; and (f) such other relief as may appear to be equitable. (14-17).

The sole ground upon which the right to such decree is predicated in the bill is fraud.

That fraud is defined in paragraph X of the bill, a full and correct summary of which is:

That the placer oil location under which appellees claim was not made by the persons named in the location notice for their own use and benefit but for the use and benefit of L. B. McMurtry, to enable him in the form of law, but in violation thereof, to secure for himself more than twenty acres of public land in one location.

This charge of fraud is concisely summarized in the opinion of the trial court thus:

“It is the government’s position in this case that it was the intention of the makers of the powers of attorney and of McMurtry to circumvent the law by permitting McMurtry to secure the location of more than twenty acres in one claim, and that there was, in effect, a conspiracy between McMurtry

and the makers of the power of attorney to violate the statute.”

It is true that the bill alleges that the location was made for the use and benefit of “L. B. McMurtry or some other person than said persons named in the location notice.” But as the government offered no evidence to identify any person than McMurtry as the person for whose use and benefit the location was alleged to have been made the “other person” referred to in the bill must be disregarded.

Answers in due time were filed which, among other things, denied specifically and categorically the fraud charged (21-32; 45-52; 71-89). The answers of the Associated Oil Company and the Standard Oil Company are not included in this record as the suit has been finally dismissed as to them.

Upon the issues thus made a trial was had upon the merits, which, according to the opinion of the trial judge reported in 259 Fed. 341-355, resulted in a record “exceedingly voluminous, consisting of many thousand pages of testimony and many exhibits.”

The trial judge, District Judge Bean, after a most thorough and painstaking consideration of the record, wrote an exhaustive opinion which shows that the fraud charged had not been proven; and, accordingly, made and entered a decree dismissing the bill.

In that opinion he incorporated a full and impartial summary of the testimony of all of the witnesses and all of the exhibits. The summary of the testimony

of the witnesses is omitted from the opinion as published in the Federal Reporter. Because of this and of the fact that counsel for the government concede the summary of evidence in that opinion to be full, fair, accurate, and impartial by their failure to criticize it in any manner or to disagree with it in any particular in their brief on file herein, we print the entire opinion as Appendix A hereto, that this Court may have the benefit thereof and observe how thoroughly the trial Court considered the case in all of its aspects, including all those presented in the brief of appellant.

District Judge Bean in his opinion confined the discussion to the fraud charged. This because no other question was before him or is in the case.

It is true that in paragraph VII (7) of the bill it is alleged:

“None of said defendants, nor any other person, was, at the time said land was withdrawn on the 27th day of September, 1909, as hereinbefore set forth, a bona fide occupant or claimant of said land and in the diligent prosecution of work leading to the discovery of oil or gas thereon or therein, *under a valid, subsisting location under the mining laws of the United States.*”

The inclusion of the italicized words admits that appellees were such occupants and claimants engaged in said work but for the alleged fraud in the location.

So that, on this appeal if there is any question properly before this Court, it is solely this:

Does the evidence prove the fraud charged?

That the question stated is the only one in the case is proven by the fact that appellant in its brief says: "Drilling for oil was going on upon the land at the date of said withdrawal order" (p. 2); and, "In January 1909, the California Midway Oil Company" (one of the appellees) "commenced drilling for oil on the south sixty acres of the northwest quarter and continued such work to discovery" (p. 7).

II.

BRIEF OF THE ARGUMENT.

1.

INTRODUCTORY.

The record before this Court does not affirmatively show on its face that all of the evidence upon which the decree appealed from was based is before this Court and, hence, this Court must presume that there was sufficient evidence before the trial court to justify its decree (as will be shown hereafter).

Appellant's brief in its entirety is devoted to an attempt to show (a) by meager, fragmentary and biased extracts from the record and (b) by citation of a part only of the decisions which must be considered in arriving at a correct decision herein, that the conclusion of the trial court from the admitted facts should have been different.

But preliminarily these matters are passed and herein is first discussed the case on its merits.

2.

THE EVIDENCE IN THIS RECORD WHOLLY FAILS TO PROVE
THE FRAUD CHARGED—IT IS A CONSPICUOUS EXAM-
PLE OF FAILURE OF PROOF.

The opinion of the trial judge so conclusively demonstrates the correctness of the foregoing heading by an unusually exhaustive recital of all of the evidence, including all of the parts thereof incorporated in appellant's brief; by clear-cut and forceful reasoning; and by ample citation of authority (none of which are mentioned in the brief of appellant), that no further argument is necessary, except to show that the position taken by appellant in its brief is wholly untenable.

To do this effectively it is necessary to direct the attention of this court to some well-settled rules of law by which the sufficiency of evidence offered to establish fraud is to be tested. No reference to these rules is found in appellant's brief.

"Judge Van Fleet, now on this Circuit, and formerly of the Supreme Court of California, when upon that bench, said in *Truett v. Onderdonk*, 120 Cal. 581, 588, 53 Pac. 26, 29: 'The presumption is always against fraud, a presumption approximating in strength to that of innocence of crime.'"

U. S. v. So. Pac. Co., 260 Fed. 520.

Judge Story said:

“The onus probandi is on the plaintiff. Fraud is not presumed. It must be clearly and fully established. Suspicion is not enough. Doubtful circumstances are not enough. The evidence will not be nicely weighed.”

Sanborn v. Stetson, 21 Fed. Cas. 314.

Mr. Justice Harlan said:

“The law presumes, in the absence of evidence to the contrary, that the business transactions of every man are done in good faith and for an honest purpose; and any man who alleges that such acts are done in bad faith or for a dishonest and fraudulent purpose takes upon himself the business of proving the same. * * * It devolves on him who alleges fraud to show the same by satisfactory proof.”

Jones v. Simpson, 116 U. S. 609.

Mr. Justice Brewer in assigning the reason for his ruling that the evidence in the case before the Court did not prove the fraud charged, said:

“They (the facts) may leave a doubt but they do not bring assurance of certain wrong.”

U. S. v. Hancock, 133 U. S. 193.

“If the circumstances proven are just as consistent with honesty and good faith as with fraudulent intent the inference of fraud is not warranted” (citing cases). “To establish fraud, the proof must be clear, unequivocal, and convincing” (citing

cases). "Proofs which only create suspicion are not sufficient to sustain a finding of fraud."

In re Hawks, 204 Fed. 309, 316.

Said the court in *U. S. v. Barber Lumber Co.*, 172 Fed. 961, that evidence which makes only for "mere inference, conjecture or suspicion" is not enough to prove fraud.

In the case last referred to the Court answered the claim of government counsel that evidence of circumstances following the entry (like those here), failed to prove the fraud charged by saying:

"It is just as reasonable and certainly more just to suppose that the entryman or entrywoman, in making the application to purchase, acted as they each testified, honestly and in good faith, than it is to conjure up some contrary theory, which necessarily assumes that all the witnesses in this case upon that question perjured themselves at the trial."

U. S. v. Barber L. Co., *supra*.

"If there be two inferences equally reasonable and equally susceptible of being drawn from the proved facts, one favoring fair dealing and the other corrupt practice, it is the duty of the court or jury to draw the inference favorable to fair dealing" (citing cases). "For fraud must always be proven, so that when the plaintiff's case goes no further than to establish a state of facts from which the inference of fraud may or may not be

reasonably drawn, he has failed to establish his charge."

Ryder v. Bamberger, 172 Cal. 789.

Cited in:

In re Hawkes, 204 Fed. 316,

U. S. v. Cal. Midway Oil Co., 259 Fed. 341.

These cases, and literally hundreds of others decided by various courts of last resort in this country and in England, simply state a rule of law that has been uniformly and unanimously applied everywhere in measuring the sufficiency of evidence to prove fraud.

This rule applies in suits between the government and citizens just as it applies in suits between citizens.

U. S. v. Trinidad etc. Co., 137 U. S. 160;

Kirk v. Hamilton, 102 U. S. 68, 76-7;

U. S. v. Chandler-Dunbar Co., 152 Fed. 41.

Properly to apply this rule to the evidence in this record there should be kept in mind what is actionable fraud in connection with the question of title to public land.

"The primary fraud lies in the filing of the application and the actionable wrongdoing of the claimant consists in *that which he did prior to and at the time of the making of his application and not what he did thereafter.*"

U. S. v. Kettenbach, 175 Fed. 463.

"The locations were either fraudulent at the time they were made or not at all, and it is to that question that the inquiry is to be confined."

U. S. v. Cal. Midway Oil Co., 259 Fed. 354.

“All that it (the law) denounces is a prior agreement, the acting for another in the purchase. If when the title passes from the government no one save the purchaser has any claim upon it or contract or agreement for it the law is satisfied.”

U. S. v. Budd, 144 U. S. 154.

The same rule is stated in:

U. S. v. Detroit L. Co., 200 U. S. 337,

U. S. v. Mundy, 122 U. S. 182,

Williamson v. U. S., 207 U. S. 425,

U. S. v. Kettenbach, 208 Fed. 214.

The cases of *Pereles v. Weil*, 157 Fed. 419, and *Arnold v. Weil*, 157 Fed. 429, are especially illuminating on this point. In both cases Judge Sanborn wrote the opinions.

In the *Pereles* case a writ of habeas corpus was granted because the indictment omitted to state that *before the entries mentioned in it were made* the entrymen had made an agreement to make the entry for the use and benefit of the company and not for themselves.

In the *Arnold* case such writ was refused because the indictment stated the existence of such prior agreement.

In the two opinions Judge Sanborn took much pains to show that his rulings in them were compelled by settled authorities which uniformly held that no crime is committed in the absence of a prior agreement.

The same proposition was stated in another way in *U. S. v. MacIntosh*, 85 Fed. 333, thus:

That fraud in acquiring title to a tract of public land is not perpetrated "when there was no *prior conspiracy* whereby he (the entryman) became the mere agent of the corporation for the purpose of procuring title for it."

It was because the evidence proved the existence of such pre-location agreement that appellants' leading cases cited on page 42 of their brief held the locations in question to be fraudulent and void. Those leading cases are Nome & Sinook Co., v. Snyder, 187 Fed. 385, and Cook v. Klonos, 164 Fed. 529.

In the Snyder case the opinion recites expressly that five men entered into an agreement on June 4, 1899 to locate placer mining claims thereafter in Alaska; that by the agreement the interest of each party in claims to be located was fixed so that some were to have more and others less than a twenty-acre interest; and that the land involved was located under that agreement. The Court applied the prior agreement rule and properly held the location void.

In the Cook case the Court in its opinion said that it held the location fraudulent because:

"E. T. Barnett testified that in March, 1905, *before the location was made*, he had an understanding with Cook and Rydenour as to ownership in the claims."

Then, after showing that the evidence was that by that prior agreement Barnett was to have a three-eighths interest in each claim located, two others were to have a third interest, etc., the opinion continues:

“This distribution of interest by Barnett, who appears to have been the moving spirit to secure possession of the ground, *was made before the location of the claims.*”

It has been held upon the abundant authority cited in the opinion, that persons may lawfully locate claims through and by an agent. See U. S. v. Dominion Oil Co., 264 Fed. 955, in which many cases are cited.

The cases of U. S. v. Wells, 192 Fed. 870, and U. S. v. Woolley, 262 Fed. 518, as being contrary to the foregoing authorities are not in point.

The Wells case involved the sufficiency of an indictment for conspiracy under Sec. 5440 of U. S. Rev. Statutes.

The Woolley case charged fraud and deceit in the making of proofs under the Homestead law.

The rules of law settled by the foregoing authorities, applied to the evidence in this case conclusively establish the correctness of the conclusion of the trial Judge that the evidence wholly failed to establish the fraud charged.

But at the risk of prolixity, specific application of the rules to the evidence will now be made, as in this way it will clearly appear that appellant's brief is built upon a false premise.

First: Two inferences have been drawn from this evidence—one in favor of fair dealing (District Judge

Béan) and the other in favor of corrupt practice (Secretary of Interior Payne). Both these men were acting as a judicial officer of the United States and both are able lawyers of long judicial experience. It is admitted for the purposes of the argument that these opposite inferences are reasonably drawn. The opinion of District Judge Bean is attached hereto as Appendix A, and the opinion of the Secretary of the Interior is attached to the appellant's brief as an appendix.

That the two decisions are based upon identically the same evidence appears from the Secretary's statement of what the evidence before him was, at the bottom of page 68 and the top of page 69 of appellant's brief. United States v. California Midway Oil Company, Equity B-10, referred to therein is the title and number of this case in the trial court.

The very fact that two opposite inferences have been drawn from the same evidence by these eminent lawyers conclusively establishes that the fraud here charged has not been shown by that character of evidence which the law requires, namely: "Clear, convincing, unequivocal, and satisfactory."

These two opinions conclusively show that upon this evidence the existence of the fraud is in doubt, regardless of which inference drawn therefrom is correct. Therefore, it is the duty of this Court to affirm the trial court and to hold that there is a failure of proof. There is no alternative under the law as has been hereinbefore shown.

Second: It is certain that prior to January 1, 1909, the date the location involved was made, there was no agreement express or implied between the locators or any of them and McMurtry, or anyone else, that the locators were to act merely as the agents for McMurtry or any other person.

On pages 24 to 32 of appellant's brief is set forth some fragmentary excerpts from the testimony, apparently for the purpose of showing the existence of such an agreement.

But even in this, no mention of such agreement is made and from this no inference that it was made can be drawn.

The complete answer to any deduction of counsel for appellant from the evidence set forth on said pages of their brief would have appeared had counsel set forth in their brief all that the witnesses said on the subject. Because they failed to do this it is necessary that such testimony be set forth herein. The parts thereof in italics show significant omissions by the government in its excerpts from the testimony.

R. B. WELCH:

"In December, 1907, I resided in West Haven, Conn. and was a time clerk. I signed power of attorney to L. B. McMurtry at request of my brother-in-law, John B. Thickens (250). I signed papers in respect to this matter. I trusted to my brother-in-law and signed whatever he asked me to sign. I was not familiar with the laws of the United States governing the making placer mining

claims. I supposed I was locating a claim and that some day it would be worth some money (251). *If Mr. Thickens had said it was necessary for me to advance some money I suppose I would have done so.* (252). *My brother-in-law did not ask me to sign so that Mr. McMurtry would be given a chance to make some money'* (268).

WM. A. KEENAN:

"In December, 1907, I was a clerk for Nixon & Thickens. I knew it was possible for an American citizen to locate lands (610). *I knew this power of attorney to McMurtry was going around the office giving him power to locate lands for those who signed it and I was afraid Mr. Thickens was going to leave me out of it. If he had not asked me I would have asked him to let me in on it.* (611). *Mr. Thickens was my boss and I had implicit confidence in him so did not inquire about this business* (617). *In the conversations with Thickens at the time I signed the power of attorney nothing was said or intimated about my name being used in the interest of McMurtry or Thickens. I never heard Thickens make a statement to that effect to any of the other boys in the office. I did not intend that the power of attorney should be used for the benefit of McMurtry or Thickens* (621).

EUGENE METZ:

In December, 1907, I was a salesman for Nixon & Thickens. I signed a power of attorney to McMurtry. Thickens asked me if I would give a friend of his power to locate some lands for me

and try to find oil. He said if he found oil I would make a lot of money out of it. Naturally I became interested and I was willing to sign. That was the only conversation I had before I signed it. (587). *I understood I was a locator in my own right.*" (594).

WM. A. MAHR:

"In December, 1907, I was a salesman employed by Nixon & Thickers. Thickers introduced me to L. B. McMurtry (525). I was not familiar in detail with the public land laws. I knew there were such lands that could be located, and in a general way knew that there were laws governing such locations. I signed a power of attorney to McMurtry (256). *Thickers asked me to sign it to give McMurtry power to locate lands for me in California.* We had been talking about it day in and day out long before I ever signed it (527). *I had many conversations with Thickers regarding the possibilities of oil lands in California and McMurtry's ability as a locator and I was anxious to sign the power of attorney because I wanted to associate myself with an organization that was going to try and develop and locate these lands. Thickers had never said anything to the effect that he was asking me for the use of my name to take up lands for McMurtry nor was there any suggestion or insinuation made to that effect by Thickers or any of the other signers of the power that McMurtry was to have any interest of any kind in the lands that were located. At the time I signed this power I had no intention of permitting McMurtry or anybody else to use my name for*

locating lands for themselves, nor did I intend to assist anybody in obtaining more mineral land than they were entitled to. I had no other intention than that McMurtry as my attorney should legitimately and honestly locate lands for me and my associates as could be legally located for me and in my name (538). I would not have signed the power of attorney if I had known McMurtry or any person acting for me intended to use my name to defraud the Government.” (543).

HERBERT M. WALKER:

“In December, 1907, was a salesman for Nixon & Thickers and was not familiar with the United States land laws. I am the Herbert M. Walker who gave McMurtry the power of attorney to locate oil on mineral land (624). Thickers said he had a friend by the name of McMurtry who was well up on oil lands and he believed if I would give him a power of attorney to locate oil lands for us it would prove valuable for us and, therefore, I gave him the power of attorney (625). *At the time I signed the power of attorney nothing was said by Thickers to me of the subject of lending my name so that McMurtry could locate lands for his own benefit nor was there any insinuation to that effect, nor any agreement that McMurtry would have any interest in any of the lands that might be located in my name.” (660).*

F. H. ROMAINE, JR.

“In December, 1907, was employed by Nixon & Thickers as salesman. Had never taken up any public domain and the only information I had con-

cerning the requirements and privileges under the mining laws was what Mr. Thickens explained to me at the time I signed the power of attorney to McMurtry. (572). Thickens brought the power to me and he said there was no question but that the transaction was clean and above the table and all that, and of course he was one of my employers and naturally I thought that there could not be anything outside of what he said so I signed the power of attorney after he had explained it to me. *There had been several conversations about the matter before* (573). *Thickens did not ask me to sign so that McMurtry could get the lands for himself. He located the lands for me. Nothing was said about McMurtry, Thickens or anybody else having an interest in case they were valuable. I never had any intention that he should use my name for the purpose of obtaining from the Government any interests in mineral lands or minerals for himself* (583). *There was no statement by Thickens that I would be giving McMurtry any interest in the lands located. He did not say anything about accommodating McMurtry.*" (586).

C. RUPERT WALKER:

"In December, 1907, working as bookkeeper for Nixon & Thickens. Did not then know McMurtry (595). I signed a power of attorney to McMurtry. Thickens presented it to me. *I had full confidence in Thickens* (596). *Before I signed the power of attorney Thickens did not say that any money that came out of it would belong to McMurtry or that any land I might get out of it*

would, or that any land or money would belong to anybody but myself" (608).

H. E. BASHORE:

"I was employed by Nixon & Thickers as office manager. I considered Thickers a confidential friend (676). Relied a good deal on Thickers, he being a personal friend. I never felt that he would ask me to do anything but what was right. (677). When I signed that power of attorney Thickers did not tell me how he or anybody was going to be benefited by it that I recall (701). I had no intention when I signed that power of attorney to aid Thickers or McMurtry to cheat or defraud the Government" (702).

Nothing thus far to prove an ante-location agreement. This cannot be questioned.

Looking at the testimony of the only other persons who could have been a party to such an agreement (to whose testimony on this important subject no reference is made by the government) no change in the matter will appear except denials that any such or any other agreement was made.

The other persons are McMurtry, Powell, Thickers and Thorn.

L. B. McMurtry:

"I caused these original powers of attorney to be prepared. I was not present when any of these people executed these powers of attorney (777). I had no conversation with any of the persons who signed

them in regard to location of lands thereunder, nor did I by writing or otherwise communicate to them any of my plans or intention (778). I did not ask them (Powell; Thickens, Thorne or Searles) to get individuals whom they could influence or control in the event locations were made in their names and made no suggestions as to any particular person or persons (798). I can assure Your Honor that there never was a time, neither was there ever an occasion for me to use a dummy locator. It was something that had never occurred to me to use a dummy locator at any time or anywhere or under any conditions. I never thought of such a thing (820). I did not ever make a request of either one of the locators directly or indirectly to execute any kind of an agreement or declaration that the located properly belonged in whole or in part to me or that I had any interest therein" (799).

Powell said:

"Nothing was said in this conversation with McMurtry about locating oil lands in California as to his wanting to use my name in order to locate the lands for his benefit or that he might have an interest in them, nor did I make any such suggestion in soliciting Taylor and Meinecke to sign, or suggest that they act as dummy locators for McMurtry or anybody. No suggestion or intimation was made to me by McMurtry that he wanted to use the names of thirty-two people or any people to take up land in California for his own use and benefit. This subject was never broached at any time by McMurtry, Searles, or anybody on behalf of Searles or McMurtry." (329).

Thorne said:

"I heard McMurtry ask Thickens, Searles and myself if we could get some of our friends to sign power of attorney. All that I remember is that he had made up his mind to go west and had secured the blanks, and if we would sign them he would get locations for us. McMurtry offered to locate the lands for us and we accepted the offer." (669).

Thickens said:

"In these talks I had with McMurtry prior to signing these powers of attorney he did not tell me that he wanted me to go out and get a lot of people to sign so that we could get control or so that he could get the lands for himself or for me, positively not. He did not say that he wanted to get dummy locators (742). I presented the power of attorney to several persons and explained to them the whole proposition as I understood it; that there was a chance for them to locate some lands in California; that McMurtry was an expert oil man and understood all about oil lands, and there was a chance for them to locate some lands and possibly to make some money out of it." (739).

In view of this positive and unequivocal testimony this Court must agree with Judge Bean, who said on this point:

"The evidence of the New York locators, as well as that of McMurtry and his associates, is clear that there was no express understanding or agreement, at the time the powers of attorney were executed, or prior thereto, or at any time, that they should be used for McMurtry for a fraudulent

purpose, or for any purpose than to make, develop and dispose of mining locations for the use and benefit of the locators, and in my judgment such understanding is not to be inferred from the circumstances.”

The claim of the government to the contrary cannot be sustained, except “to conjure up some theory which necessarily assumes that every witness perjured himself on the trial”; and there is no basis in the evidence for such assumption.

The government made no attempt to impeach any witness and did nothing else to impugn the veracity of any of them. The utmost that the government claims in its brief is that they should be disbelieved because when they (the locators) testified they knew that a large amount of money had been derived from their locations. But the complete answer to this is that it frequently occurs that men tell the truth on the witness stand even though they thereby suffer financial loss.

So much for the testimony concerning this transaction down to the date the location in controversy was made.

The next inquiry, logically, is concerning the circumstances relating to this transaction which occurred after the said location was made.

Those circumstances and the law with reference thereto were tersely, accurately, and forcefully summarized by Judge Bean in his opinion, thus:

“The evidence of the New York locators, as well as that of McMurtry and his associates, is clear that there was no expressed understanding or agreement, at the time the powers of attorney were executed, or prior thereto, or at any time, that they should be used for McMurtry for a fraudulent purpose, or for any purpose other than to make, develop, and dispose of mining locations for the use and benefit of the locators, and in my judgment such understanding is not to be inferred from the circumstances. But few, if any, of the signers knew McMurtry by sight or had any communication with him about the matter. They executed the powers of attorney at the request of either Thorn, Thickens, or Powell, in whom they had the utmost confidence, and upon whose representations they relied in so doing. They were led to believe that McMurtry was an honest man familiar with the mining laws, and that he intended to make locations for them and in their names, if he could find property open to entry. It is true they were not familiar with the mining laws and made no particular inquiry concerning same, nor after executing the powers of attorney did they manifest any particular interest in what had been done, if anything, thereunder, but signed such papers and receipts, and accepted such sums of money as were presented and paid to them from time to time. All this may well have been because of their confidence in their principal and his associates, and reliance upon the statements and representations made to them. The fact that their confidence was misplaced does not render their acts fraudulent, and although McMurtry’s conduct subsequent to the

locations was not such as should have characterized the relations between a principal and his agent, he nevertheless at all times up to and for some time after the sale to the Associated Oil Company, and notwithstanding the indorsements on the checks and the other papers executed by the locators, treated them as the owners of the locations and dealt with them and the property as such. All contracts and conveyances made by him were made and executed in the name and for and on behalf of his principals. He recognized their rights or claim to the property by from time to time seeking and obtaining releases and acquittances from them, and by causing to be issued to them stock in the Pacific Oil Lands Company, the holding corporation, and obtaining their consent to the corporate meetings and distribution of dividends therein. In July, 1910, he freely acknowledged that, notwithstanding previous conveyances made by and to him, the property was in fact held in trust by the grantees for the locators, and was willing to execute and have executed declarations to that effect.

In making the locations and subsequent contracts in reference thereto, the fair conclusion from the evidence, in my judgment, is that McMurtry was acting for and on behalf of his principals and with no intention at that time of fraudulently acquiring the land or the proceeds thereof for himself. It was not until it became apparent that a large sum of money could be realized from the transaction that his avarice or cupidity seems to have influenced him to appropriate to his own use the bulk thereof, without accounting to his principals, and

in violation of his trust. Clearly his conduct after location and discovery and sale of the property, however wrongful it may be, cannot relate back to and characterize as fraudulent the execution of the powers of attorney or the locations made thereunder. Evidence in relation thereto was only admissible and can only be considered in so far as it tends to establish a fraudulent purpose at the time of the locations. *United States v. Kettenbach*, 208 Fed. 209, 125 C. C. A. 409. The locations were either fraudulent at the time they were made, or not at all, and it is to that question the inquiry is to be confined. The law permits locations of mining claims in the names of persons not present. *Moore v. Hamerstag*, 109 Cal. 122, 41 Pac. 805. When so made, all the right or title any one can acquire by the location vests in the persons located. The interest, whatever it is, thus acquired becomes theirs, to dispose of as they please. *Whiting v. Straup*, 17 Wyo. 1, 95 Pac. 854, 129 Am. St. Rep. 1093. When, therefore, a location was made by *McMurtry* in the name of his New York principals, they became immediately vested with whatever right or title such location gave, in the absence of fraud or bad faith, and such title was not changed or rendered fraudulent by the subsequent failure of *McMurtry* to account to them for the proceeds of the property disposed of by him under his power of attorney, or by any secret or undisclosed purpose he may have had with reference thereto. I conclude, therefore, that upon the first two points the findings must be for the defendants."

Just what counsel for the government urge in answer to the foregoing it is difficult to perceive from their brief.

They devote much space to what they call the Chicago locations on this land by McMurtry as attorney in fact, notwithstanding the fact that they admit on page 4 that this land was not so located, and the testimony of McMurtry forces that admission. He said:

“In making the Chicago location I relied upon old stakes upon the ground. I found afterward by survey that none of the Chicago locations were actually made on this northwest quarter of section 32.” (807.)

But even had the fact been otherwise, successive locations upon a tract of land is never a badge of fraud.

They say on page 6 that Thickens, Thorn, Searles and Powell assured the signers of the power of attorney that they would incur thereby no financial responsibility and cite record pages 739, 669, and 313.

Those pages contain nothing on the subject. Moreover, it has been hereinbefore shown by testimony of these men that McMurtry never suggested such a thing; that he never talked with any locator who signed the power until long after the location was made. These things are not mentioned in appellant's brief.

Mention is made of the circumstance that McMurtry, as attorney in fact for the locators, deeded the land to Claflin, his attorney, in December, 1909, and on the next day Claflin made deed to McMurtry. But,

again, they do not mention the fact that this was done by McMurtry solely on advice of his attorney, Claflin, who thought it made for convenience; and that McMurtry did not have any intent to thereby divest the locators' title. (839.)

Another circumstance dealt with at great length in appellant's brief relates to the location of fourteen claims in the names of the New York locators by one Sue Greenleaf, with permission of McMurtry. However, in all that is said on the subject there is no mention of the fact that the evidence on this matter is that Sue Greenleaf made these locations under agreement with McMurtry that she would provide the funds for developing the land and in consideration therefor the locators were to convey to her a substantial interest in the land, retaining, of course, the balance for themselves. (759, 760, 812, 813.)

On pages 32 to 41 of appellant's brief the claim is made that the locators did not make inquiry about the business and some excerpts from the testimony of the locators are set forth on the matter. But in these excerpts, like those heretofore referred to, there is omitted all of their testimony in the record which shows that some of them did actually and actively inquire for information about the business from the persons they would naturally turn to for information and that the others explained that they did not inquire because they left the matter entirely in the hands of some person in whom they had implicit confidence.

Some of the omissions from the said excerpts are these:

Locator Welch said:

“John B. Thickers is my brother-in-law (250). I inquired of these lands of Thickers and he told me they were being taken care of by McMurtry (277). I relied in this matter entirely on Thickers.” (259.)

Locator Keenan said:

“Mr. Thickers was my boss and I had implicit confidence in him, so I did not inquire about this business.” (617.)

Locator Metz said:

“I trusted McMurtry so made no inquiries (589). McMurtry was a friend of Thickers, my employer.” (587.)

Locator Mahr said:

“The reason I made no inquiry of McMurtry or Thickers concerning this was I trusted McMurtry as an agent. He knew that business thoroughly and I knew that when anything of importance came up he would notify me (540). I had known him through Thickers for a long time; had been given to understand that he was a man of wonderful character and an absolutely honest man; and I had no reason to doubt that he was not acting in good faith with me.” (542.)

Testimony of other locators to the same effect could be quoted, but enough is given to show (a) that the quotations from the testimony, on pages 33 to 39 of

appellant's brief, do not correctly reflect the record and constitute a false premise upon which to base a conclusion; and (b) that had counsel for the government quoted the record fully, ample foundation for Judge Bean's statement that whatever of apparent lack of interest in the matter existed was due to "their confidence in their principal and his associates and reliance upon statements and representations made to them."

The last after-location circumstance to which counsel for the government refer (pp. 41-2) is that the evidence shows that McMurtry diverted to his own use the larger part of the moneys derived from these locations.

It is important to note in this connection that the testimony in the record about this subject relates to locations other than the one involved in this proceeding. Surely such circumstance does not clearly, convincingly prove the fraud charged in connection with the location here involved. And further, McMurtry's failure to account to his principals long after the locations were made cannot be made to relate back so as to characterize as fraudulent a location that was valid in all respects when made.

As Judge Bean forcibly puts the point:

"Clearly his (McMurtry's) conduct after location, discovery, and sale of the property, however wrongful it may be, cannot relate back to and characterize as fraudulent the execution of the powers of attorney for the locations made thereunder. Evidence in relation thereto was only ad-

missible and can only be considered in so far as it tends to establish a fraudulent purpose at the time of the location.” Citing 208 Fed. 209. (C. C. A.)

All of this conclusively appears from the fact, abundantly established by the testimony, that McMurtry in all of his transactions concerning the land located by him under the powers of attorney, including this land, recognized the interest of the locators in the business and their title to the lands in all things except the matter of accounting.

This is conceded by counsel for appellant all through their brief.

On pages 1 to 15 of appellant’s brief is set up what purports to be a summary of all the evidence, which concludes with this statement:

“Upon this testimony the court found the location made in 1909 was for the use and benefit of the locators named therein.”

The incorrectness of this claim is at once apparent from an examination of the opinion of Judge Bean, in which the testimony upon which his decree is based is summarized to the extent of at least one hundred pages. Manifestly, counsel for the government have left out in their fifteen pages of summary many things upon which Judge Bean’s said conclusion is based.

For the reasons set forth in this subdivision of this brief, and for the reasons set forth at much greater length in the opinion of Judge Bean, it is confidently

submitted that the evidence wholly fails to prove the fraud charged and that the decree appealed from must be affirmed.

III.

**The Evidence Fails to Prove That the Location
Was Made for the Use and Benefit of the Cali-
fornia Midway Oil Company.**

The correctness of the proposition stated in this heading conclusively appears from what has already been said in subdivision 2 hereof.

IV.

**It Does Not Affirmatively Appear Upon This
Record That All of the Testimony Upon Which
the Decree Was Based Is Before This Court.**

The statement of the evidence to be included in the transcript on appeal, after the title of the court and cause, is this:

“Statement of evidence to be included in transcript on appeal in the above entitled cause.

This cause came on for trial on March 10, 1919.”

Then there is set out the names of the attorneys who appeared for the respective parties.

Then follows:

“Deposition of L. A. Shadburne for plaintiff.” (119.)

Then follows the testimony of the witnesses in narrative form, to the end of the statement on page 928 of the record.

Next follows this:

“Certificate of judge to statement of evidence.

It appearing that the foregoing statement of the evidence to be included in the record on appeal to the Circuit Court of Appeals for the Ninth Circuit is full, true, complete and properly prepared, pursuant to stipulation filed herein this day, the same is hereby approved.

Dated April 22, 1921.

BLEDSON,
Judge.” (929.)

The stipulation referred to in the certificate, after the title of the court and cause, reads:

“Stipulation re statement of evidence on appeal.

It is hereby stipulated and agreed that the statement of evidence lodged by the plaintiff, United States of America, with the clerk of the above entitled court on the 18th day of August, 1920, may be approved by the court or the judge as the statement of evidence to be included in the transcript on appeal taken by said plaintiff in the above entitled and numbered cause to the United States Circuit Court of Appeals.

Dated April 4, 1921.” (116-117.)

The certificate of the clerk of the District Court to the transcript of record is set out on pages 931-2, but does not identify the statement of evidence therein referred to as the statement that was lodged with him

on the 18th of August, 1920, referred to in the stipulation above mentioned.

So that it is clear that it does not affirmatively appear in this record that the statement of the evidence contains all of the evidence upon which the lower court based its decree; nor does it affirmatively appear that the statement of the evidence in this record is the statement that was lodged with the clerk on August 18, 1920, the statement which counsel for the respective parties stipulated could be used.

In *Hansen v. Boyd*, 161 U. S. 397, a paragraph of the syllabus correctly reflects the decision of the court, namely:

“When all the evidence is not shown to be contained in the record it must be assumed that there was evidence in the case tending to support the theory of the case stated by the court.”

In *U. S. v. Copper Queen etc. Co.*, 185 U. S. 498, the court said:

“It does not appear from the bill that it contains all the evidence given upon the trial. It may be that it does, but we cannot, in the absence of any statement in the bill to that effect, presume it does for the purpose of reversing the judgment herein.
* * * When this court is asked to reverse a judgment * * * upon the ground that there is absolutely no evidence to sustain it * * * the bill of exceptions must embody a statement or there must be a stipulation of counsel declaring that the bill contains all the evidence given upon

the trial, so that the record shall affirmatively show the fact. *Russell v. Ely*, 2 Black, 575, 580, 17 L. Ed. 258, 260. In the cited case the court, after remarking that the bill of exceptions did not purport to give all that a certain witness has testified to, said that, according to a well known rule, the court under such a condition of the record, was bound to presume that there was that in the witness's testimony which justified the instruction."

This court said in *Yates v. United States*, 90 Fed. 57, 62:

"The burden of proof to show error is upon the party who asserts it and to maintain his position he must either present to the appellate court all of the evidence so that the reviewing court can see for itself what the evidence was, or present in his bill of exceptions that portion of the evidence which bears on the point in controversy, with a statement that no other evidence was submitted. As was said in *U. S. v. Patrick*, 73 Fed. 800, 'the plaintiffs in error have done neither.' The judgment of the Circuit Court is affirmed with costs."

There is no difference between the function of a bill of exceptions in law cases and the statement of the evidence in equity cases. Both are devised as a means of placing before the appellate court the evidence upon which the lower court based its act, so that the rule applicable to a bill of exceptions on a writ of error applies with equal force to a statement of the evidence to be used on appeal.

From the foregoing authorities it is plain that the record on appeal on its face must expressly state or show that all the evidence before the lower court is incorporated therein; otherwise the court will not declare that it does; and will not reverse the lower court on the assumption that all of the evidence on which it acted is in the record on appeal. On the contrary, the court will assume, in the absence of such affirmative showing in the record, that there was evidence before the lower court other than that set forth in the statement of the evidence incorporated in the transcript on appeal.

These rules of practice are especially pertinent here in view of the fact that there is nothing in the record to show that the statement of the evidence incorporated therein was the statement which counsel for the respective parties stipulated might be approved by the trial judge.

V.

In Conclusion.

The bill in this case was filed March 5, 1917 (19). This was at least seven years after thousands of dollars had been expended in the development of the land for oil (843). This expenditure in work was done with the full knowledge of appellant, through its Department of the Interior, as this court judicially knows through official public records of that department.

During this delay appellees, California Midway Oil Company and Associated Oil Company, "acted in the utmost good faith, both in acquiring and purchasing the locators' interests, and paying therefor, without any notice, knowledge or suspicion that there was or could be any question about the bona fides thereof. They made their contract concerning an interest that was apparently valid. No circumstances were disclosed, until after the full performance of the contract and the payment of the purchase price, which cast any suspicion upon the title." (Quotation from Judge Bean's opinion.)

These are facts which this court can properly take into consideration in determining this appeal.

In *United States v. Flint*, 4 Saw. 42, Mr. Justice Field said:

"All the attendant circumstances of each case will be weighed that no wrong be done to the citizen, though the government be a suitor against him."

In *U. S. v. Trinidad Coal etc. Co.*, 137 U. S. 160, it is said:

"When a sovereign becomes a suitor it submits its rights to settled judicial notions of morals and good faith the same as the subject."

The "settled judicial notions of morals and good faith" referred to in the quotation last above were stated in *Kirk v. Hamilton*, 102 U. S. 68, 76, thus:

“There is no principle better established in this court, nor one founded on more solid consideration of equity and public utility than that which declares that if one man knowingly, though he does it passively by looking on, suffers another to purchase and expend money on the land under an erroneous opinion of title, without making known his own claim, he shall not afterward be permitted to exercise his legal right against such person. It would be an act of fraud and injustice.”

And in *Dickerson v. Colgrove*, 100 U. S. 578, 580, it is said:

“The vital principle is that he who, by his own conduct, leads another to do that which he would not otherwise have done, shall not subject such person to loss or injury by disappointing the expectations upon which he acted. Such a change of position is sternly forbidden. It involves fraud and falsehood and the law abhors both.

Mr. Justice Severens in *U. S. v. Chandler etc. Co.*, 152 Fed. 41, in reference to the rights of the United States as a litigant concerning its property interests, said:

“It (the United States) is held to be affected by those equities which are recognized as fundamental in controversies between private parties. And why should this not be so? It derogates from the dignity and character of the government to suppose that, formed as it is to secure impartial justice between individuals, it may nevertheless in the conduct of its own affairs, without regard to the

principles it represents, perpetrate upon its citizens wrongs it would promptly condemn if practiced by one of them upon another.”

These facts and these authorities may be properly considered—indeed they should not be lost sight of—in testing the sufficiency of the evidence relied upon to prove fraud. These facts and these authorities amply warrant this court in holding appellant to the strictest rule of proof; in refusing nicely to weigh the testimony for the purpose of finding some ground upon which to interfere with the decree of the trial court; and in refusing to interfere with that decree upon anything less than a conclusive showing of error therein. The burden of such a showing is upon the appellant and that burden it has wholly failed to carry, as has been fully shown herein.

For all the foregoing reasons it is respectfully, earnestly, and confidently submitted that the decree appealed from should be affirmed.

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APPENDIX A.

Opinion of Honorable Robert S. Bean, Judge United States District Court.

We are hereby concerned with a suit brought by the United States to enjoin the continued operation by the defendants of the northwest quarter of Section Thirty-two (32) Township Thirty-one (31) South Range Twenty-three (23) east Mt. Diablo Meridian, in Kern County, California, as an oil bearing placer mining claim, to cancel and set aside certain mineral locations thereon and for an accounting for oil taken therefrom.

The result depends upon the bona fides of a paper location of the property in question under the placer mining laws, made in January, 1909, in the names of H. E. Bashore, R. B. Welch, W. A. Keenan, Eugene Metz, W. A. Mahr, H. M. Walker, F. H. Romaine and C. Rupert Walker by L. B. McMurtry, as their attorney in fact. McMurtry is and for many years has been extensively engaged in speculating in and disposing of alleged locations of prospective and undeveloped oil lands, part of the public domain in California.

In 1903, while in Chicago attempting to sell stock in a company organized for the development of such locations, he became acquainted with L. A. Chadbourne and C. A. Dunbar, and at his request Chadbourne and Dunbar obtained from their friends and acquaintances, four powers of attorney, each executed by eight per-

sons, known in the record as Chicago locators, authorizing him to locate in their names mineral claims in any part of the United States, and to improve, develop and make proof thereof, and to grant, bargain and sell the same. McMurtry caused these powers of attorney to be recorded in San Benito county, California, and acting under them posted notices of location in the names of his principals on numerous tracts of unoccupied possible oil properties in that county, which, however, were never developed or proved to be oil bearing.

In 1906 or 1907 development in the Midway oil fields in Kern county became active and McMurtry caused certified copies of the Chicago powers of attorney to be recorded in that county, and about January 1, 1907, posted or caused to be posted location notices in the names of the Chicago parties on sundry quarter sections of land in that district, some twenty-six in number, including the property involved in this suit. The several tracts described in the location notices so posted were merely prospective or hoped for oil lands and none of them were developed and no discovery of oil was made on any of them until after the abandonment of the locations in January, 1909. In the fall of 1908, however, McMurtry, acting as attorney in fact for the Chicago locators, made a contract with Mrs. J. M. McLeod for the development of the property in controversy, and also the northeast quarter of the same section, upon which a location notice had been posted in the name of certain of the Chicago parties, under the terms of which Mrs. McLeod was to drill for oil

in each tract, and if it proved to be oil bearing she was to have as consideration therefor one-half thereof, the remainder to belong to the locators. A short time thereafter the contract was modified by reducing the area to accrue to Mrs. McLeod to the south sixty acres of each quarter, and her interest became vested in the California Midway Oil Company who, sometime in November or December, 1908, moved lumber and other material on to the south sixty acres of the northwest quarter of the section preparatory to beginning active operations. Before it had commenced drilling, however, McMurtry discovered or was advised by his attorney that the locations in the names of the Chicago parties were defective because of a mistake in some of the names, and because the notices intended to cover the north half of section thirty-two had not, in fact, been posted on the land described therein, owing to an error as to the boundaries. He thereupon abandoned all the locations made by him in the names of the Chicago parties, and in January, 1909, posted and caused to be recorded new notices covering practically the same tracts in the names of certain residents of New York, under powers of attorney executed by them in December, 1907. These powers of attorney were obtained under the following circumstances: During the summer and fall of 1907, McMurtry had transferred his activities to New York and was engaged in selling stock in an oil company in that city. The financial panic of that year made it impossible for him to continue his operations, and in December he concluded to return to

California. Before doing so, he asked associates of his by the names of Thorn, Thickens and Powell to obtain four powers of attorney, each executed by eight qualified persons authorizing him to locate, develop and dispose of oil lands in their names if he should be able to locate any such lands open to entry, on his return to California. Thickens, Thorn and Powell thereupon approached their employees and friends, explained the matter to them, and requested the execution of such powers of attorney, assuring them that they would thereby incur no financial responsibility and there might be something in it for them. Four powers of attorney (one of which was used in making the location in suit) were thereupon executed and acknowledged, each by eight separate persons, authorizing and empowering McMurtry to locate in the names of the signers mineral claims, to develop and improve the same, and to bargain, sell and dispose thereof. These powers of attorney were delivered to McMurtry and duly recorded in Kern county, and were used by him in posting and causing to be recorded location notices on the several tracts mentioned in this suit and other property, eight names being used for each tract. In some instances, he authorized third persons to use the names of the signers to the powers of attorney in making locations for themselves.

A few days after the location in controversy in this suit, McMurtry, in the names of Bashore and others, under one of the powers of attorney referred to, agreed with the California Midway Oil Company, through its

representative J. M. McLeod, that it should proceed with the development of the property covered thereby and the northeast quarter of the section, located by him in the names of another group of the New York parties, on substantially the same terms as the previous contract with Mrs. McLeod, as modified, but under the New York locations.

Sometime thereafter and in January, 1909, the California Midway Oil Company commenced drilling for oil on the south sixty acres of the northwest quarter and continued such work to a discovery in the summer of that year. On May 17, 1909, the New York locators, acting by McMurtry, their attorney in fact, conveyed their interest in the entire north half of the section to J. M. McLeod, subject to the outstanding contract under which the California Midway Oil Company was in possession and at work, and simultaneously therewith and as a part of the same transaction McLeod agreed in writing that if oil should be discovered on either of the quarters, he would immediately make application for patent therefor and upon issuance of the receiver's final receipt would, by good and sufficient deed, grant, bargain, sell and convey to the locators the north one hundred acres of each quarter.

On December 3, 1909, the New York locators by McMurtry as their attorney in fact, assigned their interest in the contract of May 17, 1909, with McLeod to Judge Claflin, his attorney, and on the following day Claflin transferred the same to McMurtry.

Early in 1910, McMurtry as attorney in fact for the New York locators sold or contracted to sell the west forty acres of the north hundred acres of the northwest quarter to the Columbus Midway Oil Company for \$100,000.00, and received as payment thereon the sum of \$10,000.00, and on March 22, 1911, as such attorney in fact, deeded the property to the company, taking back a mortgage to secure the payment of the balance due thereon. The Columbus Midway Oil Company subsequently made default in the payment of the balance of the purchase price, and on November 22, 1912, conveyed the property to McMurtry individually in satisfaction thereof, and the record now so stands.

In June, 1910, overtures were made by a representative of McMurtry to the Associated Oil Company to sell to it the locators' interest in the remaining sixty acres in the northwest quarter, the north hundred acres in the northeast quarter of section thirty-two, and 1280 acres in various other tracts covered by paper locations made by him in the name of the New York parties. Considerable negotiation and correspondence were had concerning the matter, it being agreed at one time that if the sale was consummated holders of the title would each execute declarations of trust to the effect that the title was held in trust for the original locators as evidence that they were in fact the owners of the property. This plan, however, was abandoned, and on August 4, 1910, a written contract was entered into between the New York locators, acting by McMurtry as their attorney in fact, and W. F. Herrin and others,

known as the Herrin grantees, acting for the Associated Oil Company which agreement, after stating that sixteen named persons (each of whom had executed a power of attorney to McMurtry) represented that on January 1, 1909, they had legally located the northwest quarter and the northeast quarter of section Thirty-two, Township Thirty-one (31) South, Range Twenty-three (23) East, Mt. Diablo Meridian, under the mining laws of the United States; that they were still the owners thereof, subject to the deed to and agreement with McLeod, of May 17, 1909; that a discovery of oil had been made on the northwest quarter in May, 1909, and that ever since that time they, either by themselves or their agent or representative, had diligently and continuously operated the property to the end that discovery of oil should be made upon each and both of the quarter sections; that the Thirty-two Oil Company and McMurtry individually had an apparent interest in the property; that McMurtry is the duly authorized, empowered and acting attorney in fact for each, and all of the sixteen named persons with a right to sell their interest in the property and make conveyance thereof. The contract then provides that in consideration of five thousand dollars paid to McMurtry by the Herrin grantees, he would place in escrow deeds executed by himself as attorney in fact for each and all of the locators, conveying to the Herrin grantees all his interest in the north one hundred acres of the northeast quarter, and the north one hundred acres of the northwest quarter, except the west forty acres of

the latter tract, and also deeds from McLeod, the Thirty-two Oil Company and himself individually conveying to said grantees their interest, if any, in the property; that he would proceed forthwith to obtain from the various locators, in proper form to be recorded pursuant to the laws of California, an acknowledgment that at the date of such agreement his power of attorney was in full force and effect, and also a ratification and confirmation by each and all of such persons of the execution of such deeds. The purchase price of the one-hundred-and-sixty acres in the north half of section thirty-two was to be the sum of \$430,000.00, \$175,000.00 of which was to be paid in cash, and the balance with interest in production. It was agreed that immediately on the deeds referred to being placed in escrow by McMurtry, the Oil Company would deposit with the Bank of California \$85,000.00, which should remain in escrow until the ratification and confirmation provided for should be obtained from the locators, when it and the \$5000.00 previously paid to McMurtry should be applied on the purchase price of the property. The remaining \$85,000.00 with interest was to be paid within six months thereafter, and in case the ratifications were not obtained, the \$5000.00 should be returned, and the \$85,000.00 deposited with the bank withdrawn by the Oil Company. The balance of \$255,000 was to be paid from production at the rate of twenty cents per barrel. The contract also recites that the Associated Oil Company, as the agent of the Herrin grantees, had made and entered into con-

tracts with McMurtry as attorney in fact for the purchase of other tracts of land located by him in the name of the New York locators, aggregating 1280 acres, at an agreed price of \$1593.75 per acre, payable from the oil produced from such property, and it was agreed that the Oil Company would immediately upon being let into the possession of the 160-acre tract in section thirty-two start at least one string of tools for the purpose of obtaining oil and would continuously operate the same, barring accidents and delays, until at least one well should have been drilled upon each ten acres thereof, providing it should be proven to be oil bearing in paying quantities. That immediately on being let into possession of each of the other 160-acre tracts, it would start at least one string of tools thereon and continuously operate the same, barring accidents and delays, until it was determined whether it was oil bearing or not, and that production from each tract should be applied to the purchase price thereof at the rate of twenty cents per barrel. But in case the grantees should be dispossessed by the United States or other claimants of any of the property, it should not be responsible for the unpaid purchase price of such property or for damages on account thereof.

The deposits in escrow were made by the respective parties as provided in the contract, and the attorney for the proposed purchaser prepared a form of ratification to be executed and acknowledged by the several locators as follows: "I, the undersigned, do hereby acknowledge that that certain power of attorney of

date ——— day of December, 1907, and recorded in book 10, of Powers of Attorney at page 13, Records of Kern County, State of California, by me together with seven others executed to L. B. McMurtry, is and at all times since said date had been in full force and effect and has never been revoked or modified, and I do hereby ratify, approve and confirm that certain contract of sale made for me and in my name by L. B. McMurtry as my said attorney in fact, with W. F. Herrin, et al., of date the 4th day of August, 1910, and all contracts, agreements, deeds and conveyances made by said attorney for me and in my name, and concerning said contracts of sale and sale, and also all other contracts and transactions and acts made or done under said power of attorney by said McMurtry. Witness my hand and seal this ——— day of ——— 1910”.

McMurtry thereupon went to New York and in due time obtained from all the thirty-two persons who had previously given him powers of attorney (except one who was dead) the execution and acknowledgment of the above ratification, the several blanks therein being filled in.

It was represented to them at the time the ratifications were requested that McMurtry had made locations in their names under the powers of attorney given him, and had sold or contracted to sell part of the land so located in order to obtain money with which to develop the remainder, and that their share of the proceeds of such sale was the sum of \$250.00, which was paid to each of the locators, either at the time of the

signing of the ratification or subsequently thereto, by a check signed by one Searls, but which was cashed by him upon being endorsed by the payee thereof. Upon the back of each check and immediately above the endorsement of the payee was the following: "Received from L. B. McMurtry \$250.00 in full payment for all my right, title and interest in and to the lands located by said L. B. McMurtry on my behalf in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907."

Thereafter and in 1910, the ratifications were delivered to the Associated Oil Company, the deeds previously deposited in escrow by McMurtry withdrawn by it, the money deposited by the Oil Company paid over to McMurtry, and the sale consummated. The Oil Company immediately went into possession of the property and has ever since occupied, improved and developed the same at a very great expense.

On August 17, 1911, McMurtry caused to be organized a corporation known as the Pacific Oil Lands Company, with a capital of one million shares of the par value of one dollar each, and himself subscribed for all of the stock except three shares. On September 1, 1911, acting as attorney in fact for the New York locators, he transferred to such corporation their interest in the contract of August 4, 1910, with the Associated Oil Company, and a contract with McLeod covering another section. Prior to such transfer there had been paid to McMurtry by the Oil Company on its con-

tract \$172,000.00. After the transfer of the contracts to the Pacific Oil Lands Company, the Associated Oil Company continued to deal with such corporation and to make payment to it on such contracts (and a subsequent modification thereof of date August 1, 1913, by which the company bound itself to pay \$1,375,000.00 for the property, \$75,000.00 in cash, and the balance in payments of \$201,000.00 a month) until the full consideration for the property of more than \$1,500,000.00 had been paid, the last payment of \$812,353.18 being made February 15, 1916, more than a year before this suit was commenced.

In 1911, before the modification of the contract, applications had been made to the local land office for patents to six or eight tracts located by McMurtry in the name of the New York locators under his power of attorney, but not included in the contract with the Oil Company. Early in 1912, final certificates were issued on these applications and in one or more instances, the claims passed to patent.

These facts were known to the Associated Oil Company before it completed payment of the purchase price for the lands now in controversy and was to some extent relied upon by it in agreeing to a modification of the original contract in August, 1913, and in making subsequent payments of the purchase price.

A few days after the organization of the Pacific Oil Lands Company and on September 5, 1911, McMurtry cancelled or caused to be cancelled his subscription to the capital stock of the company or a part thereof, and

to be issued in lieu thereof certificates for 500,000 shares to E. A. Hoeppepner, 140,000 shares to W. R. Harrison, 130,000 shares to E. W. Kay, 90,000 shares to Fred D. Hughes, and one thousand shares to each of the thirty-two New York locators. The certificates of stock in favor of the locators were delivered to them some time about September, 1911, by McMurtry or his agent, it being explained to them at that time that McMurtry had caused the organization of the Pacific Oil Lands Company for the purpose of handling the property located by him under the power of attorney, for their protection and that such shares represented their interest therein. They were advised at the time to hold the stock as it would prove valuable. In August, 1913, the several locators, with one or two exceptions, at the request of the secretary of the Pacific Oil Lands Company, gave to McMurtry a proxy authorizing him to represent them and vote their stock at a meeting of the stockholders of the corporation to be held in San Francisco. In December, 1913, they were advised by letter from the secretary of the Pacific Oil Lands Company that the corporation had \$20,000.00 in cash which it wished to distribute among its stockholders as a dividend, but under the laws of California, the directors could not do so without the consent of the stockholders, and enclosing a written consent to such distribution with the request that it be signed and returned, which was done accordingly.

In January, 1914, they received from the secretary of the Oil Lands Company a check for \$20.00 enclosed

in a letter saying that it represented their dividend as declared by the directors in pursuance of their written consent, and there was also enclosed in such letter what purported to be a copy of the first report to the stockholders of the company. In this report it stated in substance that for a number of years prior to January, 1909, McMurtry and his associates had located and relocated some 2880 acres of supposedly oil bearing government land in the Midway field of Kern County, California. That because of lack of funds to prosecute development work on the lands McMurtry was obliged to transfer to third persons one-half or 1440 acres thereof. That at great personal sacrifice and effort on the part of McMurtry the remainder of the lands had been held and the work done necessary to preserve the possessory title up to the early part of 1910. That the situation then became desperate. McMurtry was unable to borrow money and found himself without funds to do any more work and without means of raising the money. Just at this time he fortunately made an arrangement with the Associated Oil Company by which it agreed to take over the 1440 acres and do all work necessary to preserve the title and to pay therefore out of the oil produced from the lands, if any, at twenty cents per barrel. That the company, however, had the right to abandon any part of the land at any time and turn it back. That there were also many other onerous conditions in the agreement which it was not necessary to detail, but was the best that could be made at the time, and was the only thing

to do to save the property. That there were many people whom McMurtry felt should be beneficiaries of this agreement, the locators, the people who had given money to aid in carrying on the work of holding the lands until they were sold; those who had worked and watched, night and day, to see that hostile parties should not jump the lands; those who had labored on the land doing assessment work, and finally Mr. McMurtry himself and Mr. Hoeppner, the first of whom had conceived and carried out the plan of getting and holding the land, and the latter had done yeoman work in keeping off the trespassers and jumpers. In order that all these people should share in the contract with the Associated Oil Company, the Pacific Oil Lands Company was formed. Its stock was divided among the various people above named and provisions made to reimburse such as were given no stock. To this company Mr. McMurtry transferred the contract with the Associated Oil Company covering the 1440 acres of land in Kern County and 640 acres in San Benito County, and the stock of the company had gone to those who had contributed in any way to securing and holding the lands. That in the performance of the contract various difficulties presented themselves, and finally in August, 1913, a new agreement was entered into between the Oil Lands Company and the Associated Company by which the latter agreed to pay for the 1440 acres \$1,375,000.00, \$75,000.00 in hand and the balance in monthly installments of \$20,000.00. That this contract for the first time gave the Oil Lands

Company the assurance of the receipt of a definite sum for the property and left only one contingency on which future payments could be defeated, and that was if the government should take possession of the land sold, the payment under the contract would cease and there would be no further obligation on the part of the purchaser. That up to this time no title to any of the land sold had been obtained from the government, the Associated Oil Company simply holding possession, but it was believed that everything had been done to entitle it to a patent. However, there is always the danger of the government refusing to grant patents, in which event all our rights under the contract will cease. That the annual meeting of the stockholders was held on November 17, 1913, (same having been adjourned from August 18th) at which time McMurtry, Hoeppner and Harrison were elected directors, and the president of the company presented a report showing receipts and disbursements from the date of the organization to August 1, 1913, as follows:

Cash received by company from production of oil under agreement with Associated Oil Company	\$165,246.00
Disbursements:	
Commissions	\$16,524.60
Liquidation of outstanding and assumed obligations..	92,665.41
Paid to locators direct and attendant expenses of securing ratification of powers of attorney, etc.....	9,991.30

Salaries, managers, secretaries, etc.	38,166.60
Incorporation Pacific Oil Lands Co.	300.00
Field, office and operating expenses	3,680.50
Cash on hand July 31, 1913	3,917.59

The agreement with the Associated Oil Company of August, 1913, calling for payment to the Pacific Oil Lands Company of \$1,375,000 constitutes the main asset of the company. As against this there are the outstanding obligations assumed at the time of the incorporation of approximately \$150,000.00.

Thereafter and in the spring of 1914 a representative of McMurtry called upon the several locators and stated to them that the government was attempting or threatening to regain possession of the lands involved in this contract with the Associated Oil Company. That it was necessary to concentrate all of the stock of the Pacific Oil Lands Company in McMurtry so that he could better defend the government's action. That under the circumstances the stock was of but little if any value, but that McMurtry would pay each of them \$250.00 for their stock if they cared to take it, and if not they could keep their stock and take chances on the outcome. In view of these statements each of the locators transferred his stock in blank to a representative of McMurtry and accepted the \$250.00. This sum, together with the \$250.00 previously paid and the

\$20.00 dividend, is all the locators ever received on account of the locations made in their names by McMurtry, and no accounting of the money received by McMurtry or the Pacific Oil Lands Company for the sale of any of the property located in their names has ever been made to them by McMurtry or any one else, other than the report to the stockholders heretofore mentioned.

BEAN, District Judge, sitting by special assignment, after making the foregoing statement.

The record is exceedingly voluminous consisting of many thousand pages of testimony and many exhibits. There is, however, but little if any substantial dispute as to the controlling facts but the parties differ widely as to the inferences and conclusions to be drawn therefrom.

The locations made by McMurtry under the Chicago powers of attorney and the evidence in relation thereto, may, I take it, be laid aside, except insofar as it may have a bearing, if any, upon McMurtry's intention in asking for and obtaining the New York powers of attorney and making locations thereunder. None of the defendants claim under the Chicago locations, nor did the New York locators at the time the powers of attorney were executed by them and the locations made in their names have any notice or knowledge of the Chicago powers of attorney or McMurtry's actions thereunder, nor did they obtain such information until long after the sale of their interests, if any, had been com-

pleted and final payment made. The Chicago locations were mere paper locations and whatever rights, if any, were acquired thereby lapsed or were abandoned before discovery. The property thereby became open to relocation by any qualified person or persons. (*Miller v. Chrisman*, 73 *Pac.* 1083; *Bogwardt v. McKittrick Oil Co.*, 130 *Pac.* 417.) Nor did the fact that McMurtry authorized the use of the names of New York parties by others invalidate the particular location in question if it was in fact made in good faith.

It is also clear that the defendant California Midway Oil Company and the Associated Oil Company acted in the utmost good faith both in acquiring and purchasing the locators' interests and paying therefor, without any notice, knowledge or suspicion that there was or could be any question about the bona fides thereof. They made their contracts concerning an interest which was apparently valid. No circumstances were disclosed until after the full performance of the contract and the payment of the purchase price which cast any suspicion upon the title. They were not bound to presume that their vendors were wrongdoers and therefore make a searching inquiry as to the validity of their claim to the claim to the property but could rightfully deal with it on the assumption that their apparent right was acquired and held in good faith. (*U. S. v. Detroit Lumber Co.*, 200 U. S. 321.) And while this would not be a defense to the suit if the location was in fact fraudulent, because they were dealing with an equity, it is a

circumstance not to be lost sight of in the consideration of the case.

We proceed therefore to a consideration of the good faith of the New York powers of attorney, the locations made thereunder, and the subsequent action and conduct of the parties in reference thereto.

The signatures to the powers of attorney were obtained principally by C. W. Thorn, Edwin L. Powell and J. B. Thickers at the request of McMurtry.

Thorn testifies that during the years 1906 and 1907, he was secretary of the Empire Oil & Development Company, a corporation of which McMurtry was president, and the stock of which he was engaged in selling or attempting to sell; that he had charge of the books of the company and that its assets consisted of a lease or option on oil lands or prospective oil lands in California, which were owned or claimed by the Midway Oregon Oil Company; that he executed a power of attorney in December, 1907, authorizing McMurtry to locate oil lands in his name.

That he knew David W. Darling and asked him to sign the power of attorney. Darling had previously talked with McMurtry about the matter so that all witness had to do was to read the writing to him. There was no discussion that he remembers.

He also asked J. W. Pentz to execute the power of attorney and explained to him the reason for wanting him to do so, and that a man could locate twenty acres, or as many of them as he wished, and that he would have to do the assessment work and make discovery on

each twenty acres; that an association of eight persons could locate a quarter-section and do the assessment work and make one discovery on the quarter, which would entitle him to a patent. Witness told Pentz that he had known McMurtry a long time and believed him to be a man who understood the oil situation; that he had every confidence he (McMurtry) would locate to the best of their interest such property as was open to location.

Thorn further testifies: I think I presented the paper to Freeman for his signature, but McMurtry had talked to him about the matter before so I knew he understood the situation. McMurtry had explained to him in my presence the possibility of discovering oil on government land and what was necessary to do to locate land. I did not hear McMurtry tell Freeman or any one else why he wanted to act as attorney in fact for these people. There had been several conversations regarding McMurtry going back to California, and we wanted him to locate some land for us. The affairs of the Empire Land & Development Company were in bad shape, and there was not very much prospect of accomplishing anything. Mr. Thickens was present several times when we were talking over the matter with McMurtry, and McMurtry asked Thickens and Searls and myself if we could secure our friends to sign the powers of attorney, and I told him yes. All I remember about it is he had made up his mind to go west, and he had some blanks and if we could get some of our friends to sign them, he would make locations

for us. McMurtry gave me the form of the power of attorney. McMurtry offered to locate land for us and we accepted his offer. He was going to California, and we had every confidence in his ability to do the work and we did not consider anybody else. He said he was going to California and wanted to be home by Christmas, and if there was any oil lands open to entry it would be the first of the year.

I asked Banks, Richmond, Fardner and my brother to sign the power of attorney and told them McMurtry was going west and he had offered to make some locations, and asked them if they would like to be locators, and explained to them the placer mining laws and had them read the power of attorney. I think Freeman asked Chapman to sign the power of attorney. I took him to the notary. After Freeman left us, Chapman said that Freeman led him to believe that there would be millions in the result of his becoming a locator, and I told him I did not know whether there would be millions in it or not, but there might be something, it all depended on whether there was oil discovered on the property.

I also had a conversation with Manicke, one of the signers, and asked him if he understood the placer mining laws. He said he did not, so I explained them to him and had him read the power of attorney. I explained the placer mining laws to each and every one I secured and had him read the power of attorney, with the exception perhaps of Mr. Richmond who understood the mining laws himself.

I remember that before McMurtry went west in 1907, I heard him talk about the Chicago locations, or recall that subject was mentioned but not the conversation. I did not see McMurtry in 1908 and do not remember that I had any correspondence with him; may have made an inquiry of him as to what he had done under the powers of attorney but do not remember. I think we received word from McMurtry that locations had been made in San Benito County. Do not recall their number, but it seems to me there were something like ten thousand acres. The first time I learned that McMurtry had located lands in Kern County under the powers of attorney was in 1910, I think in August. I did not know prior to that time that McMurtry intended to make locations in Kern County. In August, 1910, McMurtry told me that he had made locations in Kern County, and told me that in order to make discovery he had sold part of the land, with the understanding that the purchaser would do the development work and secure patents, in order to protect the balance of the property. That he had also made contract with Herrin and others, which he explained was the Associated Oil Company, for 2,200,000, to be paid out of the production at the rate of twenty cents per barrel. There may have been other conversation but I do not recall it now. I do not know that I can remember all the sections that McMurtry mentioned, but I think 32, 34, 36 and 28 were among them. I think he told me the number of locations he had made, but I do not remember now. I was never told by Mc-

Murtry or any one else that my name was wanted to enable McMurtry to locate land for his own use or for any person other than myself.

Edwin L. Powell testified: I first became acquainted with McMurtry sometime during 1906 in New York. He was engaged in the oil business at that time. I sold him some typewriting machines and received stock in the Empire Oil & Development Company, a corporation which he represented, in payment therefore. I made frequent visits to the office of the company and finally took an interest in the proposition, and gave up my position with the Underwood Typewriting Company to go in with McMurtry to work for him, to attempt to help finance the company by selling its stock. Never had been engaged in the mining business prior to the time I commenced working for McMurtry. Mr. C. W. Thorn and F. H. Searls were employed in the office.

I executed power of attorney authorizing McMurtry to locate oil lands in my name, in the office of the Empire Oil & Development Company, at the request of McMurtry. The matter had been discussed a number of times and McMurtry had often mentioned the possibility of locating oil lands in California. He explained to me quite fully the procedure and suggested that he obtain powers of attorney from a number of interested parties, myself included, and asked me to secure powers from the others, so that when he returned to California, if there was land available for location he would be in position to locate it.

The attempt to finance the Empire Oil & Development Company proved a failure on account of the panic in 1907. It had reached the end of its rope and could not proceed further. The purpose of the company was to obtain and develop oil lands in California. I knew in a general way the resources of the company at the time McMurtry spoke to me about the powers of attorney but am not able to say just what they were, but know that they were rather small. It claimed an option on some properties and leases on others. I believe Mr. Thorn, Freeman, Searls, Harder and myself were interested in the company with McMurtry.

McMurtry left New York on the 20th of December, 1907. I signed the power of attorney just a few days before he left. I asked Taylor and Manicke to sign. I had talked more or less with Manicke about oil matters and explained the situation to him at considerable length as to the possibility of there being oil lands in California which could be located, and I represented to him if he signed the power of attorney and gave McMurtry authority to locate lands in his name that it might be to his financial advantage. Mr. Taylor was a very intimate friend of mine; had lived for a number of years in my home. I told him substantially the same as I told Manicke. I understood something about the mining laws at that time, and know that one man could locate twenty acres in one parcel, and an association of greater than eight could locate one hundred and sixty.

After McMurtry left New York in December, 1907, I made inquiries from the others in the office as to

whether any information had been received from him, and had probably half a dozen letters from him during that time. We got no definite information however. Simply knew that McMurtry had arrived in California and was busy trying to locate lands but had no definite information during 1908, simply that progress was being made and that McMurtry had located lands under our power of attorney for us. He did not advise me definitely what locations were made, either the number of them or just where they were located, but simply that the lands were in the Midway field and also in San Benito County.

I did not suggest to Taylor or Manicke or any one else that their names were wanted so that McMurtry could locate lands in their names for his own use and benefit, or request them to permit the use of their names so that McMurtry could do so. There was no suggestion to that effect either by me to the signers of the powers of attorney nor by McMurtry to me. I never requested nor suggested to Manicke or Taylor that they execute any instrument declaring that McMurtry or any person other than themselves were to be interested in any way in the lands that might be located by McMurtry under the powers of attorney, or never asked them to sign any declaration of trust in reference to such lands, and I was never asked to do so or to obtain such a declaration by Searls, or McMurtry or any other person.

JOHN B. THICKENS testified: Have never engaged in mining or the production of oil actively. Lived in New York in December, 1907. In the woolen business, firm name Nixon & Thickens. Knew L. B. McMurtry. Became acquainted with him in 1905. Met him at his office, 299 Broadway. He was engaged in the oil land business at the time under the name of the Empire Oil Company. I had business relations with him in 1905, 1906 and 1907. I was connected with the Empire Oil Company from the latter part of 1905. Was assistant treasurer for about a year. Frank H. Searls was the treasurer. I had some stock in the Empire Oil Company. It was given to me at the time I was made director and assistant treasurer. Met Searls and McMurtry frequently during the year 1907. The matter of securing power of attorney from a number of people appointing McMurtry their attorney in fact to locate oil lands in California was first suggested to me I think in December, 1907. I was not at that time familiar with the affairs of the Empire Oil & Development Company and did not know what its assets consisted of. Think the matter of securing power of attorney was first talked over in McMurtry's office in December, 1907. The power of attorney was handed to me either by Searls or Thorn, or I may have got it myself at his office. The matter was talked over with McMurtry, Thorn and Searls a number of times. It was explained to me what McMurtry could do out there and what he knew about oil lands, talked over in general and that is what I explained to all the people that I afterwards

secured. McMurtry did not say anything about why it was desirable at that particular time to have the power executed. Think I asked Metz, Herbert Walker, Bashore, Welch, Romaine, Keenan, C. Rupert Walker, Pratt, J. C. Thickens, Bailey, Hamlin E. Hatch, Mark W. Hatch, Wilson, Farrell, Chrisman. Bailey was an uncle of mine. J. C. Thickens was my father; both are now dead. R. B. Welch is my brother in law. I signed Chrisman's name to the power of attorney. He was not in New York at the time and did not appear before the notary. I presented the power of attorney to these several parties and explained to them the whole position as I understood it, that there was a chance for them to locate some lands in California, that McMurtry was an expert oil man and understood all about oil lands and that there was a chance for them to locate lands and possibly make some money out of it. McMurtry left New York in the latter part of December, 1907. The next I heard about the matter was some time in 1910. Had no communication with McMurtry that I now recall regarding these matters during the years 1908 and 1909. I really do not know why I did not sign the power of attorney except that it was filled up with other parties. In 1910, Searls said there had been locations made. I remember the ratification but did not talk personally to any of the locators about executing it, nor was I present at the time it was executed by any of them. Knew about the payment of money to the locators in 1910. The matter was handled by Searls. I remember going out to see Chrisman about the matter

and getting him to ratify the original power of attorney. I knew of the stock in the Oil Lands Company having been given to the locators but was not present when it was done. I believe McMurtry was in New York in 1911. Had no particular talk with him about the matter. Had repeated conversations with some of the parties who signed the power of attorney, about the stock transaction and they seemed very much satisfied and very well pleased. I also had talks with them about the \$250.00 paid them by Searls. A great many of them worked in my office at that time and we talked about it repeatedly, and they all seemed very well pleased. Know about the delivery of the stock by the locators, or the delivery up of the stock in the Oil Lands Company; that was in 1914. Talked with some of the locators about the matter. Do not recall the conversations at this time. After the surrender of the stock nothing further occurred in regard to the matter until the fall of 1916 when a number of the locators went to California.

I had a thousand shares of stock in the Empire Oil & Development Company. Had many talks with McMurtry about oil lands and the great fortunes that had been made in California by different people in the oil fields, and the vast number of acres that were obtained from the government from mere occupancy and drilling upon the lands. Heard this from McMurtry and his associates. I received no salary as assistant treasurer of the Empire Oil & Development Company. I sold some stock for that company and in doing so talked

about the values or possibilities of speculation in stock and the California oil lands. I was advised by McMurtry and these other gentlemen that all that was necessary to do in order to obtain lands was to locate them with bona fide locators of the age of twenty-one years, and go upon the land and expend one hundred dollars a year leading up to discovery, and that such discovery would relate back to the very initiative, to the filing of the location notices, and knew that the government's price of the land was two dollars and a half an acre. The Empire Land & Development Company discontinued doing business before the powers of attorney were obtained because of the fact that there was a panic in New York and it was impossible to sell stock or get money to do the development work on the property for which it held options. Knew the financial condition of the parties signing the power of attorney, and it was good.

McMurtry never told me that he wanted me to get a lot of people to sign a power of attorney so he could control them or so he could get land for himself and I never had any interest whatever in lands located by him under the power of attorney.

I asked my father and my uncle and my brother-in-law to sign power of attorney. McMurtry told me that he was going out to California to look over this unoccupied land,—government land or lands upon which the locations had lapsed and that he wanted to be prepared to locate such lands for actual bona fide citizens of the United States. It was never understood or

agreed that I should have any interest whatever in the located lands nor was it understood that McMurtry was to be a part owner of any such lands he might locate under the power of attorney. McMurtry did not say that he wanted people to sign the power of attorney that I could make do as I pleased, or that I could influence at any time to give up any part of their interest in the locations, or persons that would stand in with him or permit him or any one he selected or designated to get more lands under the laws of the United States than the law permitted. I was paid no money nor was I promised any by McMurtry for obtaining signatures to the power of attorney, nor was I promised any interest in the located lands for so doing. McMurtry told me before the powers of attorney were executed that if he located lands in California under the powers of attorney, he would endeavor to locate good lands, and that the parties for whom the locations would be made might make a good deal of money out of them, and that is the reason I got my father and brother-in-law to sign the papers, and put Chrisman's name thereto myself—I felt that it was a good chance for them to make some money. Chrisman was so far away I could not reach him quick enough, and signed his name to the paper because I thought he could make some money out of it. Chrisman signed the ratification. I explained the circumstances to him and he made no objection. Never asked anybody to sign the power of attorney as a favor to me, or to McMurtry, or to the Empire Oil & Development Company. The parties employed by my firm

who had signed the power of attorney frequently inquired of me if anything had been heard from California about the locations prior to the signing of the ratifications.

At the time McMurtry was in New York in 1910, he told me that he had located some lands in California for the locators and the people to whom he was contracted to sell a part thereof demanded a ratification from the signers of the powers of attorney. McMurtry did not ask me to get the signature of any specific person or persons to the powers of attorney.

Substantially all the parties who executed the New York powers of attorney have testified in the case. There is but little if any conflict in their evidence. As an illustration thereof, the substance of that given by the eight persons whose names were used in locating the particular tract involved in this suit will be stated.

WILLIAM A. MAHR says: I lived in New York in December, 1907, was employed as a salesman by the firm of Nixon & Thickens, who were wholesale dealers in woolens.

I had met McMurtry at our office, had no business relations with him. He was introduced to me by Thickens. Up to December, 1907, had never been interested in any company prospecting for mineral ore or oil lands. Was not familiar with the public land laws except in a general way. Signed and executed power of attorney in the presence of Thickens and at his request. He asked me to sign it "giving McMurtry

power to locate oil lands for me—oil lands in California. We had been talking about that for some time before I signed the power of attorney, cannot remember how many days or weeks, however. Signed it in Thickens' office. Do not remember whether I read it or not. Had no talk with McMurtry about the matter. Did not know C. W. Thorn at that time. Know Herbert M. Walker, R. B. Welch and F. H. Romaine, W. A. Keenan and C. Rupert Walker and H. E. Bashore. They were all employed by the same firm and I think signed the power of attorney before I did.

Did not hear anything about what had been done under the power in 1908, or until McMurtry came to our office in August, 1910. I had a conversation then with him about the matter. He said he wanted to get my ratification of the power of attorney. He said it was necessary for him to dispose of part of the lands in order to carry on work on the balance, and in order to do that he would have to get my ratification to show that I was still alive, and that I was a real live locator, as he put it, and that he was still my agent. I would not sign the ratification at first and Mr. Nixon advised us to consult an attorney to see that it was all right, and after doing so, at the suggestion of the attorney, the word "lawful" was inserted and I signed it. I read the ratification before signing it and observed the reference therein to the contract made by McMurtry as my attorney in fact with Herrin and others, of date August 4, 1910, but received no information from McMurtry or any other person as to the contents of the pro-

posed contract other than as disclosed by the ratification. Made no inquiry of McMurtry about the matter.

Did not know how many tracts of land had been located by him under the power of attorney and did not make any inquiry about it nor about the state of development of the property. Received nothing of value at the time of ratification, but did receive \$250.00 about a month later from Mr. Searls, who gave me a check on the Second National Bank of New York City for \$250.00, signed by him. I do not know whether type-writing was on the back of the check at the time I endorsed it or not, and do not remember whether I read the writing or not. I have no recollection now about the matter. Searls said to me at the time he gave me the check, "I have got the \$250.00 that McMurtry promised you, and if you will endorse that check, why, I will introduce you to the paying teller and he will give you the money." McMurtry told me at the time I signed the ratification that I would get about \$250.00 out of the part of the land which had been sold. When I endorsed the check, I handed it directly to the paying teller at the bank. Thickens requested me to go up and see him. Walker, Wilson and Metz were at the bank when I endorsed the check. No explanation was made to me at the time about the writing on the back of the check. I was with Searls just long enough to get the check cashed.

McMurtry said that when the transaction was closed with the people he was going to sell a part of the land to, I would get \$250.00 or thereabouts, but there was no

conversation at the time the money was paid as to the source of it.

The next I heard about the California oil lands was about a year later when McMurtry called on me and said that he had formed the Pacific Oil Lands Company in order to protect the locators' interests, and that he had one thousand shares for me. I think that was about September, 1911. Had not talked to any one about the California oil lands between the time when I received the check for \$250.00 and when McMurtry gave me the shares of stock in the Oil Lands Company. I do not remember signing the receipt for the stock but never received more than one certificate of stock in the Oil Lands Company. McMurtry said at the time he gave me the stock that he had organized this company to protect all the interests of the locators and "that the stock was worth a great deal more than the face value would indicate, and that to put it away and not sell it to any one." This conversation occurred in my office and Metz, Wilson, Walker and myself were present.

I was not advised as to the number of locations which McMurtry had made under my power of attorney, nor as to the area and extent of the land that had been located or the state of its development, or of any contract made with reference thereto except the one referred to in the ratification.

I knew at the time I received the stock in the Oil Lands Company that there had been a million shares issued but did not know to whom they had been issued, except I knew the locators each got a thousand shares.

Did not know that McMurtry had any shares in the company, or that Major Hoepfner had. Made no inquiry of McMurtry with reference to the matter at the time nor as to what had been done with the contract with the Associated Oil Company of August 4, 1910. May have talked the matter over with the boys around the office.

The next I heard was in 1912 or 1913, I received a notice of a meeting of the Board of Directors of the Oil Company but no advice given me at the time concerning the lands that had been located. In the latter part of 1913, I received a notice and a proxy to sign, so that the directors could distribute a dividend which they had, and which proxy I signed and returned to them. Government's Exhibit 46 is the proxy referred to and was received by me through the mail, accompanied by a letter signed by F. E. Harrison, secretary, which I think is substantially the same as Government's Exhibit 40. After I signed the proxy I sent it out to whomever it was supposed to go in San Francisco. About a month later, I got a \$20.00 dividend and a statement of the transactions of the Oil Company. The paper I signed was a consent that the directors of the Oil Lands Company might set aside \$20,000.00 cash of the assets of the corporation as a dividend—to be declared as a dividend upon the stock of the corporation, and such other sums from time to time as in their discretion might be held advisable. Dividend was received by a check dated January 8, 1914. Accompanying the check was a letter and also a state-

ment (Government's Exhibit 35) entitled "Pacific Oil Lands Company's First Report to Stockholders."

In the spring of 1914, Mr. Searls called on me and said that it was necessary to get all the stock of the Oil Lands Company into one hand so that they could fight this thing successfully "as the government was trying to reclaim the lands, and in order to do this successfully it was necessary to get the stock into one hand, into the hands of Mr. McMurtry." He said he would give me \$250.00 for the stock and I told him that amount was very small, inasmuch as when McMurtry gave me the stock he said it was worth a great deal more than the face and not to sell it. And Searls told me that \$250.00 was all I would get, and that is all they could afford to pay for it; the whole thing did not amount to much and if I did not take that I would get nothing. I thereupon signed a transfer of the stock in blank and delivered it to Mr. Searls. After surrendering the stock to Searls, I never received anything more from the Oil Lands Company, either in money or anything of value. At that time, I knew nothing about the resources or the assets of the Oil Lands Company other than as appeared in the report which I received, nor as to what had been done under the contract of August 4, 1910, with the Associated Oil Company, except as specified in the report. Did not know how many locations had been made in my name and had no information as to the state of the development of the lands or any lands which had been located and upon which my name appeared as a locator other than as appeared in

the report. Did not make any further inquiry at that time nor until Mr. Helm came into the office in 1916. Mr. Helm came to find out if I had signed the power of attorney and the different papers, and wanted to know if I would come to San Francisco as a witness in suit of U. S. vs. Thirty-Two Oil Company then pending. I was under the impression that Mr. Helm was an agent of McMurtry and I did not feel as if I wanted to do anything for McMurtry. In looking up the reports, according to the statement he had sold the land for \$1,300,000.00 and he had other money which he had received, and I figured the enormous amount that he got out of it, and that we as the clients and he as our agent, we should only get approximately \$520.00. Helm asked me if the different papers which I had signed were my signatures, and I told him yes, and he asked me if I would come to San Francisco as a witness, and I told him I would let him know, and that is about all that transpired between us. He showed me photographic copy of the ratification and my signature and one or two others. I went to San Francisco but was not placed on the stand or interrogated in reference to these transactions.

I know some of the parties executed the power of attorney before I signed it, but whether the entire seven had done so or not, I do not remember. I was on the very best of terms with the other signers of the paper but had never talked the matter over with them. Nothing was said to me by McMurtry about the matter before I signed the power of attorney and Thickens did

not tell me that he was asking for the use of my name so as to take up lands for the benefit of McMurtry, nor was any suggestion or insinuation made that McMurtry was to have any interest in the lands located by him for me or any of the other signers, and nothing was said that indicated that Thickens was to have any interest in the property. I had no intention, when I executed the power of attorney, of permitting McMurtry or anybody else to use my name for the purpose of locating lands for themselves. Never had any conversation subsequent to the execution of the power of attorney with Thickens, McMurtry, Hoepner, Harrison or Searls, or anybody else, upon the subject of McMurtry or any other person, owning an interest in any locations which were made in my name other than the contracts referred to in my testimony.

Had no intention, when I executed the power of attorney in any way to aid or assist anybody to obtain more mineral land than he was entitled to under the law, and no intention to defraud the government or the people of the United States out of any of the public domain or out of its mineral land or its minerals or any thereof, and no intention other than that Mr. McMurtry, as my attorney in fact, should legitimately and honestly locate for me and my associates as much land as he considered was oil land and could be legally and lawfully and profitably located.

Thickens said, when he asked me to sign that power of attorney, that if McMurtry located lands in my name, a report of anything of importance would be

made to me. The matter of assessment work, expenditures on the property, mortgaging or making contracts or leasing the land was left entirely to Mr. McMurtry to work out. There was no agreement that I should not put money into the property for assessment or development work. Did not know how many shares of the capital stock of the oil company had been issued when I received my certificate. McMurtry said it was a close corporation formed to protect the locators. Each locator received one thousand shares and we took it for granted that if all of us were there and got a thousand shares that was what was going to everybody else. I understood at the time that whatever interest the locators had in the property or the contracts in reference thereto either had been or would be transferred to the Oil Lands Company. McMurtry so told me or words to that effect.

I knew from the report that practically 2880 acres of supposed oil bearing land had been located, and that 1440 acres or half thereof had been transferred for the purpose of maintaining the possessory title, and that an arrangement had been made with the Associated Oil Company to take over this 1440 acres of land, and do all the work necessary to preserve the title and to pay therefor to Mr. McMurtry out of the oil produced from the land, if any, twenty cents a barrel. McMurtry said, when he went back with the ratifications, he would receive some money, and my share would be \$250.00 and the balance would go to take care of the land which he still retained. I made no particular inquiry of Mc-

Murtry or Thickens or anybody else concerning the conditions in California because I trusted McMurtry as my agent, and he knew that business thoroughly, and I knew when anything of importance came up, he would notify me. Thickens told me that he would do so. I do not recall just what McMurtry said about the matter at the time he got my ratification, although he said he was going to sell part of the land, and that he would notify us as things developed.

At the time I transferred and delivered the stock to Searls, and he gave me \$250.00, he told me that there was a possibility of litigation with the government and that the government might take the lands away from the Associated Oil Company, or the Pacific Oil Lands Company, and in that event the stock would not be worth anything at all, and that I could take my choice and either keep the certificate and take the chances of what would happen, or he would give me \$250.00 spot cash for it, and that is all that he would give for the stock, and that I could take it or leave it. He expressed the opinion that if I did not take it I would get absolutely nothing on account of the litigation.

I do not remember that I was told at the time I endorsed the first check for \$250.00 that McMurtry wanted the so-called endorsement on the back thereof in order that the locator's interest could be transferred to him individually so that he might more easily and better handle the properties for the locators, or words to that effect. I have no recollection of any explanation being made to me by anybody of the typewriting on the

back of the check, but I would not say positively that there was not. I did not understand that at the time I was selling my interest in the located lands to McMurtry and no such representation was made to me by Searls. McMurtry told me that the Pacific Oil Lands Company was organized to gather together the lands, so as to protect the locators' interests.

I knew at the time I signed the ratification in August, 1910, that McMurtry had made contracts concerning the disposition of part of the property and that the purchasers were asking that the locators ratify these contracts, and that the Oil Lands Company was subsequently organized to take care of interests in these lands and the contracts appertaining to them. I so understood from McMurtry's conversation.

The first time I met Searls was when he gave me the \$250.00 at the bank, and that was the first time I saw C. W. Thorn. When I got the report of the condition of the Pacific Oil Lands Company, I read it over and thought it was a wonderful proposition, and that there was lots of money going in there, and I had known McMurtry through Thickens for a long time, had been given to understand that he was a man of wonderful character, a man of great ability and absolutely honest. I had no reason to believe that he was not acting in good faith with us, and I believed when he told me something that he was telling me the absolute truth, and therefore I did not question him at all. What was said in the report about the government and what was told me by Searls caused me to believe that

there was little chance in our succeeding in holding the land as against the government, and their statement was an intimation to me upon which I relied to take the \$250.00 and save that much out of the wreck. I took it as a hint that I better accept that or I would not get anything, and that was because of the withdrawal of the lands and litigation in reference thereto. That is really what Searls told me. I would not have signed the power of attorney if I had known that McMurtry or any one acting for him intended by the use thereof to defraud the government out of any of its public lands.

I did not tell McWilliams in New York on April 23, 1914, that I had signed the power of attorney as a favor to Thickens, and that I considered the \$250.00 received from McMurtry more in the nature of a gift or a pick-up, or that McMurtry had treated me royally and I was thoroughly satisfied with the outcome of the matter.

I am one of the plaintiffs in the suit of William A. Mahr, et al., against McMurtry, pending in the Superior Court. Mr. Himphreys is my attorney in this suit and I gave him the facts just as I have given them here today.

WILLIAM A. KEENAN testifies: Resided in New York in 1907. Salesman employed by Nixon & Thickens. Was not familiar with the laws covering the acquisition of public lands, except in a general way. Executed power of attorney to McMurtry, signed it in the office of Nixon and Thickens. Did not know McMurtry or Thorn or Searls or Harrison at that time. Think I

had seen McMurtry once. Was requested by Thickens to sign the power of attorney and never talked with him about the matter prior to that time. Thickens asked me if I was twenty-one years of age, and I told him I was, and he said "I want you to give me your power of attorney authorizing McMurtry to locate oil lands for us in California. There were three or four signatures to the paper at that time. I did not read the power of attorney and I had no talk with any person about the matter prior to my signing it, other than that I knew it was going around the office and was for McMurtry to locate oil lands in California for the people who signed it. I was afraid Thickens was going to leave me out of it, and if he had not asked me, I would have asked him to let me in on it.

The first time I heard anything further about the oil lands transactions was in 1910. In August of that year, Thickens came to see me and asked me if I recalled the power of attorney I had given to McMurtry. I told him yes, and he said there is some money coming to you. It is necessary for you to ratify that power of attorney. So he took me out to a notary who was in the same building and on the way to the notary's office I asked Thickens what had happened and he told me that McMurtry had succeeded in locating oil lands and some of it had been sold, and there was a payment of \$250.00 coming to me, and there would be more payments from time to time. I signed the ratification at that time but did not receive any money. I read the ratification over but do not know that I gave it any special attention.

Did not inquire of Thickers anything about the contract of August 4, 1910, with Herrin and others mentioned in the ratification, nor was I advised by anybody as to the nature of the contract. Did not know at that time how many locations had been made by McMurtry in my name, and did not inquire of Thickers or any one else.

About a year after I signed the ratification, Mr. C. W. Thorn called to see me and introduced himself as the agent of McMurtry, and said that he was there to pay me \$250.00, which was coming to me. That was about a year, I think, after I signed the ratification. After I signed the ratification and before I received my money, I called Thickers on the telephone probably half a dozen times and inquired of him what had happened. Told him that some of the locators had received their money but I had not, and Thickers explained that one of the locators had died, and I couldn't receive my money until his will had been probated. Thorn paid me \$250.00. He produced a check, and said it would probably be more convenient to me if he would pay me the money, and save the inconvenience of going to the bank to cash the check—that he would cash it if I would endorse it, which I did. The writing on the back, purporting to transfer all my right, title and interest in and to all lands located by McMurtry on my behalf in Kern County, California, pursuant to power of attorney made by myself and others to McMurtry, bearing date the 19th of December, 1907, presumably was on the back of the check when I endorsed it, but I do not know whether it was there or not. I did not read it. Thorn

said he did not know what particular lands had been sold in order to raise the money, and I did not inquire of Thorn about the matter. Did not know at that time how many locations were made but knew there were some in California. Shortly after that time I got a telephone call to come to the Waldorf-Astoria Hotel, and I went to the hotel and was introduced to McMurtry by Thorn. There were other boys present and when I got there, McMurtry had some certificates of stock and he started to talking about locating oil lands and what trouble he had been to hold them, and he gave us each a certificate and said that represented our interest in the Pacific Oil Lands Company, which had been formed to take care of the original locators. That the land held by that company represented the best that had been located. The face value of the stock was a dollar a share but he said it was worth double its face value at that time, and for us to put the certificate of stock away and forget it as it was valuable, and that at any time we care to dispose of it or sell it, to get in communication with him. I accepted the certificate for one thousand shares of stock, and receipted for it. That was September 15, 1911. At the time I received the stock I did not know how many locations had been made by McMurtry nor the area or extent of the land included therein, or whether oil had been discovered thereon, and made no inquiry of McMurtry about such matters.

About a year after I received the certificate of stock, I believe it was 1912, I received a letter stating that there was to be a meeting of the Oil Lands Company

in San Francisco. At the time I accepted the stock in the Oil Lands Company, I did not know who the stockholders were or that McMurtry or Hoeppner held any stock therein. Did not inquire of McMurtry who the stockholders were. Made no inquiry about oil land matters from the time I saw McMurtry in the Waldorf-Astoria in September, 1911, to the time I received the letter in 1912. In December, 1913, I received a letter stating that the Oil Lands Company had \$20,000 to distribute and enclosing a written consent to be signed by me and returned, which I did. On the 12th of August, 1913, I signed a paper giving to McMurtry a proxy to represent me at the annual meeting of the stockholders of the Oil Lands Company to be held on the 18th of August, and any other meetings which might be held up to and including the 31st of December, 1913. Early in 1914, I received a letter with a check for \$20.00, and a report of the financial condition of the Oil Lands Company. After I received the first report to the stockholders of the Oil Lands Company, thought maybe it was going to turn out to be a big proposition for us. I talked it over with Mahr and Metz, and some of the others but made no further inquiry as to the condition of the company.

In the spring of 1914, I was called to the office to meet Mr. Searls. I think Metz telephoned me. Had never met Searls before. When I went in the office, Searls said that he had already had a conversation with the others and that they had decided to do what he had advised. He said the affairs of the Oil Company were

in very bad shape, that they were financially embarrassed and that the government was suing to take the land back, and to protect the locators, McMurtry wanted us to turn our stock over to him, for which he would pay us \$250.00. Searls said everybody else had agreed to do it on account of the condition, and he would rather see us get something out of it than nothing, so I agreed to do as the others had done. I did not have my certificate with me at the time so did not deliver it to Searls. I afterwards delivered it to Mr. Thorn, probably a day or two later, and Thorn paid me \$250.00. Thorn said at the time that while McMurtry had offered to pay us \$250.00 for our certificate of stock that he could ill afford to do so on account of his financial condition, and Thorn wanted me to exchange my certificate of stock in the Oil Lands Company for stock in the Columbus Midway Company; said that he was personally interested in that company and that it was a good business proposition, and he would let me consider it for a day or two and call again. He did call and I had decided not to take any stock in the Columbus Midway and accepted the \$250.00 and surrendered the stock to him. The time I surrendered the stock to Thorn I did not know anything about the condition of the Oil Lands Company other than what is contained in the report to the stockholders.

At the time I had the conversation with Thickens about signing the power of attorney, he did not say to me or insinuate that he wanted me to permit my name to be used for McMurtry to locate lands for himself,

and nothing of that kind was said or intimated around the office by any of the interested parties or any one else, and never any intention on my part that it should be so used. Never my intention that the power of attorney should be used for any illegitimate purpose, or for the purpose of defrauding the government out of any of its lands. There was no suggestion or intimation of that nature from any of the parties who signed the power of attorney with me, or from any one else.

At the time of my conversation with McMurtry he said there had been a great deal of trouble with people who were trying to jump the land, and the difficulty they had in holding it against the jumpers.

Hoepfner's name was mentioned in some way but I cannot recall. I think he also told me that oil had been discovered on some of the land. He said that money had been expended in taking care of the lands, and paying the help in order to save the locators from going down into their own pockets in order to finance the project; that the corporation was organized and all these people had been or were going to be paid in stock of the corporation.

At the time I received the ratification with request to sign it, I knew that McMurtry had made a sale of some of the lands or a contract for a sale and that I was asked to confirm such contract by signing the papers. My understanding was that the Pacific Oil Lands Company was formed to take care of the original locators and that the land held by the company represented the best that had been located. The only definite informa-

tion I ever received about the acreage located was contained in the report to the stockholders. Everything else concerning the land was general talk. At the time Searls offered to buy my stock, he said that the lands were involved in litigation and the only way to protect them as I understood it, would be to turn my stock over to him so that he could make a fight for it.

HERBERT M. WALKER testifies: Was employed by Nixon & Thickens in December, 1907. Was not familiar with the laws of the United States concerning the disposition of the public domain; had never acquired title to any public land. Am not familiar with the public land laws. I am the Herbert M. Walker who gave a power of attorney to McMurtry to locate oil and mineral lands. I do not remember who presented the power of attorney to me for my signature. I was connected with Nixon & Thickens, and Thickens knew McMurtry, and at that time I believe McMurtry was interested in some oil company that he wanted to sell shares for, and Thickens wanted me to buy some shares of stock of that company, but I did not do so. A little later Thickens said he had a friend by the name of McMurtry who was well up on oil lands, and that he believed if we would give him a power of attorney to locate oil lands for us it would prove valuable, and therefore I signed the power of attorney. I cannot say how often he talked to me about the matter. I know he was very much interested in this other oil company and was trying to sell stock for it. I do not remember, but I think it was probably a matter men-

tioned among the boys in the office that we might hear something from it, a good thing.

The first thing I remember occurring after I signed the power of attorney was when McMurtry came to New York and wanted us to give him a ratification; I think that was probably two or three years later. McMurtry said he had located the property and that he had very little money and that in order to take and develop the property further he would have to dispose of part of it, and I was given to understand by him at the time that unless he could dispose of part of it, the locators would lose probably all of it. I therefore signed the ratification in order to try and hold what we had, but I would not sign it until after I consulted a lawyer, and he advised the insertion of the word "lawfully". McMurtry talked to me a number of times about the matter before I would sign the ratification. I do not think I asked him the number of locations that had been made by him in my name, but I was given to understand that he had located certain tracts in my name, how much property it was I cannot at this time say.

I did not make any inquiry of McMurtry about the contract of August 4, 1910, between him and Herrin and others, nor did I know what lands were affected. I took McMurtry's word that he had sold part of the lands in order to raise money to develop and hold the remainder. I was given to understand that unless we gave him the ratification, we would probably lose all the lands which he had located. I was promised

\$250.00 if I signed the ratification; that would be my share of the proceeds that would come from selling part of the land, and the remainder of the proceeds would be used to develop the rest of the property.

The next thing I heard about the matter after signing the ratification was about a year later, when McMurtry came east again and gave me a thousand shares of stock in the Pacific Oil Lands Company. A short time after I signed the ratification, Thickens said to me that he had received from McMurtry the \$250.00, and if we would go with him to the Second National Bank he would get the cash. I went with him and while there met Thorn and Searls. I did not know them, although I believe Thorn had been in the store before. There were four or five of us in the office and when I say "we", I refer to the employes of Nixon & Thickens, who signed power of attorney with me. When we went to the bank we met Searls and I received \$250.00. Thickens introduced me to Searls, and said "This is Mr. Searls" and said "he is going to give you the money". And Searls said "All right, boys. I am going to give you the money; come right over here to the paying teller's window and endorse the check and he will give you the money for it". And as near as I remember we lined up at the paying teller's window and endorsed the check, and \$250.00 was handed to each of us. I do not remember whether was any writing on the back of the check at the time I endorsed it or not. If it was, I did not see it. It occurs to me now, from an examination of the check, that it might have been there

but if it was there I did not see it. If I had seen it, I never would have endorsed the check to get \$250.00, that is sure. I made no inquiry of Searls as to the source from which the \$250.00 came, for the reason that I had confidence in Thickens and believed that he was working in my interest as well as the other locators, just as much as he would be for anybody's interests where they were employed by him. I did not inquire of him as to the source of the money because I took it for granted it came from McMurtry, and he said it would be my share of the proceeds therefor. I made no inquiry as to what disposition had been made of the lands upon which I had been located, of Searls and Thickens.

After I received the \$250.00, I did not hear anything more about the oil transactions for about a year when McMurtry came again and gave me these shares of stock in the Oil Lands Company. That was in our office. As near as I can remember, he came in one day and said, "Here are a thousand shares of stock for you; that is part of your proceeds from the oil lands." I remember very distinctly he said under no circumstances sell or dispose of this stock, this is going to be very valuable to you. I did not inquire of McMurtry at the time he gave me the certificate of stock, nor did I hear any other person inquire of him, as to the assets and resources of the Oil Lands Company, except that when he gave me the certificate I took from what he said that it looked a great deal better for the property that we had located than it did when he came back here

to get the ratification for the reason, as he said "this would be very valuable indeed and not to sell it to anyone". That if I wanted to sell it, to let him know and he would buy it and he would give me a great deal more than was represented here. I did not inquire of McMurtry as to the number of locations, but I understood that he had located property for each one of thirty-two locators, but did not know how many acres. Did not know that McMurtry or Hoepfner had stock in the Oil Lands Company nor did not make any inquiry about the matter, nor hear any such inquiry by others. Did not make any inquiry at the time I received the certificate of stock as to what had been done under the contract with Herrin and others, and did not know.

The next thing I heard after McMurtry gave me the stock in the Oil Lands Company was a notice of the stockholders meeting in 1912, and a little later got a paper to sign appointing McMurtry my proxy to represent me at the meeting of the stockholders of the company, and subsequently I got a dividend of \$20.00. The proxy was dated August 12, 1913, came to me by mail and I signed and returned it. In January, 1914, I received copy of the first report to stockholders. Sometime later, I do not remember just when, Mr. Searls came to me and said he represented McMurtry, and McMurtry had sent him to take up or buy my stock in the Pacific Oil Lands Company, and said he would give me \$250.00 for it. I told him I did not care to dispose of it for the reason that when McMurtry

gave it to me, he said to hold on to it, that it would prove valuable. I told Searls I would rather have the dividends than sell the stock. Searls said that McMurtry must have the stock for the reason that the United States was going to bring suit to recover the land, and McMurtry wanted the stock so that he could better defend the suit, and having confidence in him and believing that he would do the right thing by me, I let Searls have the stock for \$250.00. At the time I surrendered the stock, I did not know what the assets or resources of the Pacific Oil Lands Company were. I thought by surrendering the stock I was doing the best thing for myself, and trusted McMurtry and believed what he said, that he could better defend the suit the government was going to bring. The proposition looked reasonable and therefore I transferred the stock. I made no inquiry at that time as to the assets or resources of the company nor did I know who the stockholders were, and made no inquiry upon that subject. I thought thirty-two locations had been made, one for each of the parties. I knew nothing about the state of development except that I understood all necessary work had been done to comply with the regulations. At the time I disposed of my stock I made no inquiry about what had been done under the contract with Herrin. That subject was not considered. The only reason I gave up the stock was so that McMurtry could better defend the prospective suit. Since surrendering the stock I have received nothing on account of the land transactions, but I hope by the time

we get through with McMurtry in the suit we are bringing against him, we will get our just share.

I read the power of attorney before I signed it. Nothing was said to me about allowing my name to be used so that McMurtry could locate lands for himself or the benefit of any other person than myself. There was no agreement or understanding that McMurtry should have any interest in the land to be located, and never heard of any such arrangement. No understanding that I was to be paid money for the use of my name. I read the ratification before I signed it and submitted it to a lawyer for his inspection. The ratification was presented by McMurtry and he said that the reason he wanted it signed was because he had sold some of the property, and in order to work the balance of it he must have some money, and I believe he said something to the effect that the lawyer for the purchaser wanted to be sure that the people who had given the power of attorney were alive and would ratify the power of attorney and the contract made thereunder. I understood from what McMurtry said that not only was it necessary to sell part of the land in order to develop the remainder, but that whatever came out of the contract referred to in the ratification was problematical and would depend on whether oil was found and how much oil was found.

I had no intention at the time I signed the power of attorney or at any other time, to permit the use of my name by McMurtry or anybody else for the purpose of cheating or defrauding the government, or to

locate lands for McMurtry or any other person. No such suggestion or intimation was ever made to me, and no conversation to that effect was had with any of the signers. At the time McMurtry asked us to sign the ratification, he told us of the trouble he had had or was having in holding the property.

EUGENE METZ testifies. Was working as a salesman for Nixon & Thickers in December, 1907. Prior to that time had never been interested in any company or corporation engaged in procuring or producing oil. Know McMurtry. Got acquainted with him in 1911; was introduced by Thickers. Executed a power of attorney to McMurtry on the 19th of December, 1907. Thickers came to me and asked if I would give a friend of his a power of attorney to go and locate land for me, and I asked him what it was for, and he said to try and find oil, and he said if he found oil, "you would probably make a lot of money out of it", so naturally I became interested and was willing to sign it, and did sign it. Had only one talk with Thickers about the matter. I had heard of McMurtry prior to that time but did not know him personally. He may have been in the office but I did not know him. I knew at that time that as a citizen I was entitled to some land if I could get it. Did not know how many acres constituted an oil claim, or how many persons were required to join together in order to make an association claim. Did not receive any particular advices on the matter from Thickers before I signed the power

of attorney. After I signed the power of attorney did not hear any more about the matter until 1910. At that time McMurtry came to our office and said that he had located oil lands and expected to get a lot of oil out of it; that it was such a big proposition he would have to sell part of the land in order to get money to work the balance; that it cost a lot of money to run the thing and the only way to get this money was to sell part of it and use that money. Did not ask him how many locations had been made nor as to the area or acreage thereof, and had no information on that subject. He requested me to give him a ratification of my power of attorney. About a month after I signed the ratification I received \$250.00. He told me at the time that I would get \$250.00; he said it would come to me from the money he received from the sale of the land. Did not know at the time anything about the contents or the purport of the contract with the Associated Oil Company and did not inquire of McMurtry about the matter, but trusted him. After I signed the ratification, I gave it to McMurtry. Mr. McMurtry came in one day and presented the ratification to me to sign, and I would not sign it right away. I said I wanted to look into it and see a lawyer before I signed it, so we took it up with a lawyer and he read it over and said it was all right only to insert the word "lawfully". By "we" I mean Mahr, Walker, Wilson and myself. I received the \$250.00 from Searls at the Second National Bank. I first met Searls at the time he came into the office with McMurtry with that rati-

fication; had never met him before. Thickens told me that Searls was at the bank and if we went up there we would get our money. I think Mahr, Walker, Wilson and myself went up together. I suppose the typewriting was on the back of the check when I signed it but I do not remember seeing it. I was in the bank when Searls gave me the check and he handed it to me and says "Endorse this and I will identify you at the window". I wanted to get through in a hurry and I simply signed my name and handed it right back to him. I have no recollection of reading the typewriting on the back. Searls said at the time he gave me the check that it was the money that McMurtry had promised me a month before. I was told that it was part of the money that McMurtry got for selling part of the land located for us. I did not know at the time to whom he sold, nor did I inquire.

The next time I heard anything about the matter was about September, 1911. McMurtry came and gave Mahr, Walker, Wilson and myself a thousand shares of stock each, saying that he had formed a company to take care of the locators and that he had given me the stock as my share. I did not know what the capital stock of the oil company was at that time, nor how many locations had been made by McMurtry under the power of attorney, nor the area or extent thereof, nor the debts and resources of the oil company, nor what had been done under the contract with the Associated Oil Company which was mentioned in the ratification; made no inquiry about these matters at that

time. All I said to McMurtry was "how are things getting along" and he said all right and said he hoped to do more for us later on. He said "Put that stock certificate away in a safe and do not sell it because it is worth its face value today" and if I wanted to sell it to notify him and he would buy it back again. He was in the office probably half an hour. Made no inquiry of him as to the state of the development of the property, but he said that oil had been discovered on the land, he could not tell the quantity but it was very large. All the stockholders I knew of were the locators. Did not inquire whether McMurtry or Hoeppner held any stock or not.

The next I heard about the matter was when I got a notice of a meeting of the Board of Directors, one in 1912, and one in 1913. In 1913, I got some paper authorizing the distribution of dividends. After I signed the consent to the distribution of the dividend, I sent it to the Pacific Oil Company through the mail. The next transaction that I remember was when I got my check for the dividend in January, 1914. Received it through the mail, accompanied by the first report to the stockholders.

The next matter was in the spring of that year when Mr. Searls came and said he was sent by McMurtry to take up my stock. I think Thorn was with him at the time, I won't say for sure, but I think so. Mahr and Wilson were in the office at the time Searls said he was sent by McMurtry to buy in the stock. Everything looked bad; that the government had instituted

suits to reclaim the land, and if we did not take the \$250.00 he was offering, we would get nothing; everything would be lost for all of us. We believed him and transferred our stock. He made everything look black, everything would be lost. He paid me \$250.00 in cash. I made no inquiry of Searls about the property or the resources or the assets of the oil company, because he came and told us everything was down and out and there could not be any assets. I did not know how many locations had been made nor the area or extent thereof. The only information I had was in the statement I got from the company in January, 1914, made no further inquiry. Did not know what became of the contract made with the Associated Oil Company, nor at that time that they had been assigned to the Pacific Oil Company; made no inquiry about that. I thought the locators were the only stockholders of the Pacific Oil Lands Company. Did not ask whether McMurtry or Hoeppner were stockholders or not. Never received anything from the transactions after I surrendered my stock to Searls. Never expended any money in the development or improvement of the property and was never asked to.

I said I had received no advice or advices at the time I disposed of my stock that the contracts with the Associated Oil Company had been assigned to the Pacific Oil Company, but if such a statement is contained in the report to the stockholders which I received, then I knew it. I also had the information as to the number of acres located from this same report, and of the

trouble that had beset McMurtry in taking care of the lands. At the time McMurtry gave me the stock he said that the Oil Lands Company was organized for the purpose of protecting the locators and that he was paying the debts of the locators for work that had been done on the property out of the stock of the corporation and thereby saving assessments to the locators. He said he had to erect derricks which cost a lot of money and to carry water in his pockets; that somebody had to stay on the land all the time to protect it; said that the money he got from the sales was to be used in developing the balance of the land; that it was doubtful whether the locators would get any money because the purchase price of the land sold was to come out of the oil if oil was found there. If there was no oil, there would be no money.

At the time I signed the power of attorney there was nothing said to me by Thickens or anybody else to the effect that they wanted to use my name for the benefit of McMurtry, or anybody in the interest of McMurtry to enable them to get land that they were not entitled to. There was no condition of any kind or character attached to the transaction that in the event land should be located in my name by McMurtry it would redound to his benefit. I understood that if lands were located, I was to be the locator in my own right. There never was any agreement that we should be paid money for the use of our names; it just depended on whether he located land or not.

At the time Searls bought my stock he said he was authorized to offer me \$250.00 for it. That there was danger of the government taking the land away and that I could either hold on to the stock and take my chances, or could accept his offer. I knew at the time I signed the ratification that McMurtry had contracted to sell part of the lands, and that the purchasers were requiring a ratification of the power of attorney so as to know if the people who had given the power were real live people and had not revoked it, and I knew the ratification was signed for the purpose of enabling McMurtry to dispose of the land, and I did so with an honest intent, and as an absolute locator, and not for anybody else. I did not intend by signing the ratification to aid or assist McMurtry in any way in cheating any third person into buying the lands illegitimately located.

FRANK H. ROMAINE testifies: Was employed by Nixon & Thickers in December, 1907, salesman. Had never taken up or acquired title to any of the public domain of the United States under the land laws. Executed power of attorney to McMurtry at the request of Thickers. I got into this oil idea through him, who was a personal friend of McMurtry. They came to me some time before the power of attorney was signed and asked me if I would take stock in the Empire Oil & Development Company, and I took four hundred shares of stock, and from that it led into eventually the Pacific Oil Lands Company. Bought the

stock in the Empire Oil & Development Company through Thickens who represented McMurtry. Knew McMurtry very slightly. Had met him on perhaps a couple of occasions. I did not know him at the time I signed the power of attorney. Thickens explained the matter to me, and the usage in settling the California oil lands; said was no question but what the transaction was clean, above the table, and all that. Of course he was one of my employers, and naturally I thought that there could not be anything outside of what he said; besides that it was the way that lands were being located in California at that time, according to the laws of California, so I signed the power of attorney, right then, after he had explained it to me. I had several conversations with Thickens before I signed the power of attorney, so that I really understood it when I signed it better than I did before I had any explanation about it. After I signed the power of attorney in 1907, we talked about it practically right along, very little cessation in our conversation for the simple reason Mr. Thickens said on account of having invested in the Empire Company he would like to see me in it, and was almost sure I would get more out of this than I put in the other.

I afterwards learned that locations of Public oil lands had been made by McMurtry in California acting under my power of attorney. I think it was at the time we were asked for ratifications that Thickens told me, that was in 1910, I think the month of September. Prior to that time, I had made no definite inquiry as

to whether or not any locations had been made. We made inquiries about the land—some of the boys in the office made inquiry about the lands in California and what they were and whether they were productive, from a friend of ours in Chicago, a friend of the boys in the office that lived in Chicago, and who had been in California; that was about the time we signed the ratification. The ratification was presented to me for my signature by Mr. Thickens. I read it over and it was also explained to me. I read the ratification before I signed it, but did not make any inquiry about the contract of August 4th, 1910, referred to therein. Do not think Thickens said anything except in a way he reiterated what he first told me, that it was absolutely all right to sign it. I was not paid anything at the time, nor was I promised anything. In September, 1911, I was paid \$250.00 by Searls; he gave me a check. I have no recollection what the typewriting was on the back of the check at the time. It was never in my possession except while my hand was on it while I signed it. Searls was not in the office more than five or ten minutes at the time. He simply said that dividend was being paid and that he brought the cash so as to save me the trouble of going to the bank. He gave me the cash, and I endorsed the check and gave it to him. Searls said the money came from the first sale of part of the lands located in Kern County. I made no inquiry of him as to the number of locations or the area or extent thereof, but I was told by Thickens, probably, what he heard from McMurtry.

That was at the time I signed the ratification. Thickens said there was practically some twenty-eight hundred and some odd acres in Kern County, and some hundreds of acres in San Benito County.

The first I heard after receiving the \$250.00 was from Searls—was when I was asked to give McMurtry a proxy to vote my stock in the Pacific Oil Lands Company. Received the stock from McMurtry, Searls and Thorn at The Waldorf-Astoria Hotel. I was called to go up there, do not remember who requested me, but it was by phone. McMurtry, Searls and Thorn were there when I arrived. McMurtry handed me the certificate of stock and said to be very careful and put it in the safe—put it in some safe place because it was going to be very valuable. We did not discuss the resources of the Pacific Oil Lands Company and I did not know that the contract with Herrin and others had been transferred over to the Oil Lands Company. I did not make any further inquiry about the matter. I did not have a chance to talk to McMurtry about anything because they were in a hurry. I did not inquire as to the assets or liabilities of the Oil Lands Company, because I was told that we were going to get a statement shortly. Did not know that McMurtry or Hoepfner were stockholders in the company.

Between the time I obtained the shares of stock in 1911, and the time I executed the proxy we were constantly talking about the matter in the office. Were five or six of us who were interested in this power of

attorney. Thickens said he would like to have me execute a proxy so that McMurtry could vote my stock.

The next thing that occurred after the signing of the proxy was receipt of dividend of \$20.00, and a statement of the affairs of the company. I received this by mail with a letter signed by Harrison, as secretary of the Oil Lands Company. I remember getting a "statement to the stockholders" but did not read it over carefully.

The thing that occurred next was when Searls came to New York and bought the stock from me for \$250.00, I think that was in December, 1914. I cannot say definitely, it may have been in March or April. Searls came to the office where I was working and told me that the company was not in good shape and that they were either going to sell out to somebody or were going to buy the stock, and this was about what I was to get. Searls paid me \$250.00, do not remember whether it was paid in cash or by check. Searls asked for my certificate of stock in the Empire Company, saying that as soon as McMurtry had straightened out some things, he was going to reimburse the holders of the Empire Oil Company for the investments which they had made. I have never received anything yet, however, on that account.

I did not know what the assets of the Oil Company were at the time I surrendered my stock to Searls and did not know anything about the contract with the Associated Oil Company except what is contained in the statement to the stockholders. Did not know who

the stockholders were or whether McMurtry or Hoeppner had any interest therein, or the number of shares held by either of them. I knew all the boys in the office that I had been in with and who were generally locators with me, in the same office. I knew what stock the boys in the office had, because we all got the same number of shares.

After I delivered the stock to Searls I never received any money from the corporation and never had any business with it.

Think McWilliams came to me in April, 1914, and asked me to give him a statement in connection with these oil land matters and I wrote him a letter, which is marked Government Exhibit 58. I know all the parties who signed the power of attorney with me except Welch, I do not recall him. At the time I signed the power of attorney, Thickens told me that McMurtry was going to California to try and find some government land that he thought would be oil land and open to location. He said that McMurtry was anxious, and so was he, to give all the persons who lost money in the Empire Company an opportunity through his efforts to locate lands in California and thereby make good their losses, if possible, and also to make some money. Thickens said that in addition to giving me a chance to make some money, I would be doing him a favor because he got a lot of people interested in the Empire Oil & Development Company who had lost their money. He did not say or intimate to me that McMurtry wanted the use of my name so as to get

lands in California for himself; he was to locate the lands for me. Nothing was said to the effect that if lands were located and turned out to be valuable, McMurtry was to have an interest therein. Never intended that McMurtry should use my name for the purpose of obtaining an interest in mineral lands or lands of the United States for himself.

At the time I signed the ratification, I was told by Thickens that a contract had been made with the Associated Oil Company, and that it was going to drill a well upon the land, and the pay was coming out of the oil at the rate of twenty cents a barrel, or some such sum, if oil were discovered on the land, and that the company demanded that there should be a ratification of the power of attorney previously given to McMurtry so as to show that the signers were real parties and were alive and that the power had not been revoked.

At the time McMurtry gave me the certificate of stock in the Oil Lands Company, he said that the company had been formed for the purpose of taking care of the locators, and that the contract he had made with the Associated Oil Company would make the property valuable. That the contract with the Associated Oil Company, which I had previously ratified, had been assigned by him for me to the Oil Lands Company and was held in that way, McMurtry told me that they had discovered oil on some of the lands.

At the time Searls came for my stock in the Oil Lands Company and paid me the \$250.00 he told me that there was a sure thing of getting \$250.00 if I

wanted it, and if I did not want it I could hold the stock and speculate in it myself, but that there was danger of the government suing for the recovery of the land and if they did the stock would not be worth anything.

At the time I signed the power of attorney it was explained to me that it would be a great accommodation to Thickens and also to McMurtry, and that it would be for my benefit to do it. Nothing was said about giving McMurtry an opportunity to acquire land for himself.

C. RUPERT WALKER testifies: Was working in December, 1907, for Nixon & Thickens, as bookkeeper. Was not familiar with the land laws of the United States regulating the disposition of the public domain and the rights of citizens with reference thereto. Had, prior to that time, never acquired any interest in public lands. I did not know McMurtry nor Searls, nor Thorn. Executed power of attorney to McMurtry in the office of Nixon & Thickens. Thickens presented it to me. Had no conversation with him about the matter prior to the time I actually signed the paper. I signed it as a favor to Mr. Thickens because he was my boss or employer and I had full confidence in him. I cannot recall just what he said about the matter except that I know I signed it as a favor to him, and the others had signed it. This was ten years ago and it is very hard to bring it back to my mind.

The next I heard of the matter was in 1910 or 1911, I received a letter from Thickens to come into the

office, that he wanted to see me. I was not employed by the firm at that time. In the letter Thickens said "I am very anxious to see you, have something of interest to tell you. Are you working in New York and could you come in to see me some day this week? Either write me or call me on the phone; it is important and know will be welcome news. Just a little money coming to you for your kindness in signing a paper for me three years ago. Will explain when I see you. Let me hear from you at once."

Between the time I signed the power of attorney and the receipt of the letter from Thickens, in August, 1910, I do not remember having any conversation or conference with any person or persons with respect to this oil land transaction except that Thickens said there would probably be some money coming to me. That was after I had signed the power of attorney. After I received the letter from him in 1910, I went up to his office, and all I can remember is I signed the ratification. No money was paid to me at the time, but Mr. Thorn came to the office in 1911 and paid me \$250.00. I do not remember that the typewriting was on the back of the check at that time. I think Thorn gave me the check, but he said he brought the money in cash with him, and if I would just endorse the check he would give me the money. He said the money was from the sale of the oil lands. I did not know how many locations had been made and made no inquiry about the matter. Knew nothing about the purport of

any contract of August 4, 1910, with the Associated Oil Company, which is mentioned in the ratification.

I received certificate of stock for a thousand shares in the Oil Lands Company in 1911. It was given to me by C. W. Thorn; it was after I had received the \$250.00. I do not remember of any conversation with Thorn about the matter, except that he said McMurtry was giving these thousand shares of stock to the boys. By the "boys" he meant the men in our office—in Nixon & Thickers' office. He may have said why McMurtry was giving the stock, but I do not remember. I made no inquiry about the matter. Paid nothing for the certificate. Do not know how many locations had been made, nor the extent or area of the land located, nor the resources of the Pacific Oil Lands Company.

I know some of the stockholders in the Oil Lands Company, that is the locators each got a thousand shares, but that is all. Did not know how many shares, if any, McMurtry and Hoepfner had and made no inquiry about that matter. Had never met McMurtry. I remember signing Government Exhibit 64 (proxy) on August 12, 1914. Think Thorn must have come in with it. I also received a letter from the Oil Lands Company dated August 4, 1913. Also received a notice dated August 4, 1913, of the regular meeting of the stockholders of the Oil Lands Company to be held in San Francisco, August 18th. I executed a proxy to McMurtry to vote my stock at the meeting. That was dated August 12th.

The next paper I signed was the consent to distribution of \$20,000.00 in dividends. This was dated December 10, 1913. There was a letter accompanying the consent, signed by Harrison, secretary of the Oil Lands Company. Sometime after I executed this paper, I received a \$20.00 dividend by check of the Pacific Oil Lands Company dated January 8, 1914. It was accompanied by a letter from the Oil Lands Company enclosing a statement of the affairs of the company. After I received the dividend check for \$20.00 in 1914, and a month or two later, Thorn came to me and told me that the government was going to sue for the land, and if McMurtry had the certificates in San Francisco, it would save a lot of expense, that he wanted to see us get something out of it, so he offered me \$250.00 for the stock, saying that the other boys in the office were selling, so I sold my certificate to him for \$250.00, and he paid me that sum, I think in cash.

At that time I did not know how many acres of land had been located, nor the extent or area thereof, or who were the stockholders of the Pacific Oil Lands Company except that I knew the locators had received a thousand shares each. After I had delivered the stock to Thorn, I received no money on account of the land transactions. I never spent any money in the development of the property and was never asked nor requested to do so. At the time I signed the power of attorney there were four signatures thereto ahead of mine. I did not know what the paper was, but I signed it as a favor to Thickens, and they signed above mine, and I

thought the paper was all right. I do not remember whether I read it or not. There was no reason that I know, no particular reason, why Mr. Thickens should ask a favor of me rather than other people or other persons employed by him, or from other acquaintances of his. I had full confidence in him and believed that he would not ask me to sign or do anything that was wrong. I had heard of oil lands, but the only thing that I can remember was something regarding such lands in the paper I signed. While I was employed by Nixon & Thickens, I heard Thickens tell the boys in the office, or make the remark that there would probably be some money coming to us out of the transaction and I had no reason to doubt his word. The boys may have talked the matter over, but I do not remember. I do not remember hearing Thickens say anything about the locations, giving the boys in the office a chance to give McMurtry a power of attorney to have oil lands located in their names to make some money, I cannot remember. Thickens has talked to me about signing a power of attorney in his office. I did not know what was in the power of attorney. The only thing I can remember about it is that I saw McMurtry's name and something about land. That is all I can recall.

R. B. WELCH testifies: Was employed by the Connecticut Company in December, 1907. Suppose I signed the power of attorney. Do not remember who requested me to sign it unless it was my brother-in-law, Mr. Thickens. Cannot recall what was said to

me by him—cannot recall whether I signed the power of attorney. I trusted my brother-in-law and signed whatever papers he asked me to sign. Do not know what purpose I had in mind in signing that. Was not familiar with the laws of the United States covering location of mining land. At the time I signed the power of attorney, I supposed I was locating a claim that some day would be worth some money. Got my information from Thickens. Do not know at this time how many claims were made under the power of attorney. I subsequently signed some ratification papers. At the time I signed the power of attorney I suppose I would have advanced some money to be used in the development of the property to be located if Mr. Thickens had said it was necessary, but he never did that I recall. I signed the ratification but cannot tell how I came to do so nor who presented it to me. I think I read it before signing it and knew what it meant, but did not make any inquiry of any one concerning the contracts between McMurtry and Herrin and the others referred to in the ratification, and had no information in reference thereto that I now recall. Did not know how many locations had been made nor where the land was supposed to be located.

I received a check from Searls for \$250.00 which I endorsed and, as I now recall, sent it to Thickens, but do not recall that I received any money on account of the check. I cannot recall the next transaction with reference to the oil lands. Think I received certificate of stock in the Oil Lands Company but cannot give

you the date. I think it was received from Mr. Thorn; I think it came by mail. Cannot say how long I kept the stock. In March, 1914, endorsed the transfer thereof in blank in the presence of Horton. Cannot tell what I did with the certificate after so endorsing. Cannot say whether I received any money on account thereof. I never knew how many claims had been located. Have never claimed any interest in the lands located in my name and claim no interest now.

Am thirty-nine years old, a brother-in-law of Thickens; married his sister. In all the matters concerning the oil lands I relied absolutely on Thickens. I presume he told me the object of the power of attorney was to locate oil lands in California that might make me a lot of money. Think I got a check for \$20.00. Had entirely forgotten about it until my attention was called to it during this examination. During the direct examination had entirely forgotten about the Pacific Oil Lands Company and about their having sent me this check for \$20.00 dividend. Am a little nervous. There was another paper attached to the check which I signed but I cannot remember all the papers I did sign. I signed the proxy to McMurtry authorizing him to represent me at the stockholders' meeting of the Oil Lands Company, and vote my stock. I should say that I knew I had stock in the company at the time I signed that paper and should say that I also knew that McMurtry was my agent for the purpose of locating oil lands. At the time I received the check for \$250.00 it was suggested to me that it might be a

good thing to buy 750 shares of stock for the \$250. in the Columbus Midway Oil Company, and I may have given the check for such stock. At the time I gave up these two certificates, one of the Columbus Midway Oil Company, and the other of Pacific Oil Lands Company, I received \$500.00, and I had forgotten about that when Mr. Hall asked me. I cannot tell who gave it to me. I received information of the meeting of the stockholders of the Oil Company and some paper that showed the condition of the company. When I received the \$500.00 and the \$20.00 I understood that it was because of my interest in the located lands out in California; I knew that I had some claim to these lands. I remember that I was informed that McMurtry had made an arrangement with the Associated Oil Company by which the Oil Company agreed to take over 1440 acres of the located lands and to do all the work necessary in order to preserve the title, and pay for them out of the proceeds of the oil produced from the land, at twenty cents a barrel, if they got oil. At the time I signed the power of attorney, Thickens told me that McMurtry knew all about oil lands in California and that he (Thickens) was getting some people to locate lands out there. I got the impression from him that he was giving me a chance to become a locator or to have a location made in my name, and a chance to make some money out of it. I was not trying to commit a fraud on the government or any one else, or help Thickens or McMurtry to perpetrate a fraud. Did not think I was doing anything but exercising a legal right.

Thickens told me that he wanted me to sign the power of attorney for my own benefit, and did not say it was intended to give some other person a chance to locate lands. I did understand from the report to the stockholders that McMurtry had located lands, and had a lot of trouble in holding on to them against jumpers. Remember that I signed a consent authorizing the Board of Directors of the Oil Lands Company to declare a \$20,000.00 dividend. Cannot remember whether I was told at the time I received the \$500.00 check that there was some question raised by the government about the lands and that I could have \$500.00 in cash for my interest or could hold on and take a chance on the outcome. Think I inquired of Thickens about the land and he told me that it would be taken care of by McMurtry. I have it thoroughly fixed in my mind that when Thickens asked me to sign the power of attorney he told me that it was to locate oil lands in California, and that I had a chance by doing it to make some money out of the lands. All the money I received out of the transaction was the \$500.00 and the \$20.00 dividend.

HARRY E. BASHORE testified: Lived in New York for about fifteen years. Thickens sold me some stock, a short time after which he asked me to sign a power of attorney. He was a member of the firm of Nixon & Thickens.

I considered him a confidential friend. He came to me one day and asked me to sign my name to a paper which he said was a power of attorney giving Mc-

Murtry power to locate certain oil lands in California. He said we would not be required to put up any money and by signing this paper it would mean a lot to him, as well as assist Mr. McMurtry. Under these conditions, I did not hesitate to affix my signature knowing that I would not be involved financially in any way, shape or form. I had no intention at the time of acquiring any public land for my own benefit and did not expect to locate personally or through McMurtry any public oil land with the intention of spending any money thereon in the development of the same or otherwise. I was not informed of my name having been used at any time in locating any lands.

A short time after I signed the power of attorney, Thickens came to me and asked me to sign another paper, the name of which I have forgotten, and that paper was signed in the office where I worked for Nixon & Thickens. I do not remember the exact conversation except that he wanted me to sign the paper and said that all of the other boys who had signed the power of attorney were going to sign it. I read the paper. I do not remember any specific conversation as to the contract of sale mentioned in it. In all my dealings with Mr. Thickens, he being a personal friend, I relied a good deal on what he said. I do not remember that he gave me any information as to the estimate and value of the lands affected by the power. I might have been influenced to sign it because Thickens was a very warm friend of mine, and I never felt he would ask me to do anything except what was right. And

when I signed the power of attorney, I was assured I would not be involved in any way, shape or form, and simply signed this other paper the same as the former one. I was not informed at the time that my name had been used in locating placer mines in California, and did not at that time claim any interest in such lands. I do not recall that I received any money at the time I signed the latter paper (ratification). I received some money, but as near as I can remember that came to me at a later time. I received a check for \$250.00 on the Second National Bank of New York signed by Searls, but if my memory serves me right it was sent to me at a later time than when I signed the paper. Received the check from Mr. Thickens, in a letter in which he said among other things: "The use of your name is bearing fruit and I am able to make good my promise. I am enclosing a check for \$250.00. Put this through your bank as soon as you can as we want to get all the checks back as soon as possible as we have to show them as receipts. In addition we are giving a bonus of a thousand shares of stock, par value one dollar per share, in the Pacific Oil Lands Company. This stock will be worth two dollars a share very soon, so you see I am making good. Just sign the two receipts and return to me. Deposit the check and get that through as quick as you can. I am glad you are on to this."

The next year I did not hear of the oil transactions, so some one or two years later Thickens wrote me again, in which he said: "Once more I have good news

for you. Send me your stock in the Pacific Oil Lands Company signed by you in the space designated on the back of the certificate. As soon as I receive this certificate will send you check for \$250.00 which I have been authorized by the company to give to the locators for the return of this stock. The government is making it hot for us at the present time, and in order to carry our point with them and try to hold at least a part of our land, it is necessary to have all the stock in California. For this reason I am asking you to send me the stock properly signed by return special delivery. Upon receipt of same will forward check to you." This letter was dated March 16, 1914. I had received the stock in the Pacific Oil Lands Company at some previous time, one thousand shares. I received \$250.00 for the surrender of the stock; Mr. Thickens sent it to me in the form of a check. I may at some time have received a proxy authorizing McMurtry to vote my stock, with the request that I sign it, but that is not clear in my mind. I was never informed that locations had been made in my name outside of those involved in this suit, either in Kern or Benito County, California, and I never claimed any interest therein. I think I received a check for \$20.00 as dividend on the stock of the Pacific Oil Lands Company. A copy of the first report to the stockholders of the Lands Company was sent to me, I think by the company direct, in August, 1914.

Outside of the \$250.00 which I received in September, 1911, at the time I signed the ratification, the

\$250.00 received when I surrendered the stock and the \$20.00 dividend, I have received nothing whatever on account of the lands located in my name. I do not now claim any interest whatever in such lands.

I had known Thickens four or five years before I signed the power of attorney. I invested \$95.00 in the Empire Oil & Development Company, and requested Searls to return the money to me but did not get it. At the time Thickens asked me to sign the power of attorney he said that McMurtry wanted to go to California and locate oil lands, and had to have power of attorney, and showed me a line where to sign it, and that I would not be involved in any way, shape or form. I asked him whether it was right for me to sign it and whether I had a perfect right to do so, and I did not want to do anything except what was right.

I did not talk to any of the other employes of Nixon & Thickens about the power of attorney before I signed it. I do not have a recollection of doing so, although the chances are that I may have talked with them. After the power of attorney was signed, I may have talked with them jokingly about making some money out of it, but I never expected to do so. I did not know McMurtry at the time I signed the power of attorney, and never met him until I went to San Francisco some years later. I knew that Nixon & Thickens kept in very close touch with McMurtry, and I do not recall that Thickens told me at the time he requested me to sign the power of attorney that he was to be benefited thereby, or that McMurtry was to be bene-

fited or how it was going to help either one of them. At the time Thickens asked me to sign the power of attorney he said that if McMurtry made good he would take care of us. On that condition I signed the power, and was told there was sixteen others, several of whom I knew worked in the same firm, but I did not expect anything out of the transaction.

Before I signed the check for the last \$250.00 I telephoned to Nixon and asked his advice and he said "when you get something for nothing what is the use of standing out". That is after I had executed the ratification and had received the report to the stockholders of the Pacific Oil Lands Company. At the time I signed the power of attorney, I had no intention to aid or assist McMurtry or Thickens to cheat or defraud the government or to permit them to use my name to cheat or defraud the government, but I acted in absolute good faith.

I was informed that McMurtry was an expert in oil lands and understood that he was going to California to see if he could find some lands and locate and commence work thereon.

J. H. McLEOD, who represented his wife and the California Midway Oil Company in this transaction with McMurtry concerning the lands in question, says:

Myself and associates organized the California Midway Oil Company with a capital stock of one million dollars, and the lease or contract with Mrs. McLeod was transferred to it for 200,000 shares of its stock. It actually commenced drilling on the northwest quarter

of section 32 on January 10, 1909. I was the representative of the company and was not advised prior to January 1, 1909, that McMurtry was going to relocate the lands and did not know that the Chicago locations were defective. Made agreement for the development of the property with McMurtry, representing the New York locators, in January, 1909, and a paper was drawn up evidencing the same in Calfin's office. Mrs. McLeod and myself owned all of the issued stock in the Midway Company at that time. I had some information prior to January 1, 1909, of a supposed defect in the locations under the Chicago powers of attorney, but understood Mr. Claflin was to fix it up in some way, I did not know how.

The defendant McMurtry was called as a witness by the government and testified:

I reside in California. Interested in mining, have been for probably twenty-five years. Have operated in California, Nevada and Arizona. Think I first became interested in 1898. First interested in the Oriental Oil Company which continued in business for about a year and a half; next in the Midway Oil, known later as the Midway Oil Company of Oregon. It had its main office in San Francisco; had some lands in the Midway field which it was attempting to develop.

I am the McMurtry mentioned in the Chicago powers of attorney. Do not have the originals of such papers, have been unable to find them. The form of the Chicago powers of attorney as well as that subsequently executed by the New York parties was prepared for

me by my attorney in 1902. At the time it was prepared I did not have in contemplation any particular individuals who would execute it. I think I gave it to Chadbourne and asked him to get the parties to execute it. I asked him if he could get thirty-two locators to sign the power of attorney for the purpose of locating lands in San Benito County, California. I did not, at that time, contemplate the use of the power in the Midway field. I did not have any activity or claim any land in the Midway field at that time under location. There was no conference or conversation between myself and any of the parties who executed the Chicago powers of attorney, and I was not personally acquainted with any of them, and never met any of them until 1916. The first thing I did under the power of attorney was to make some locations or post notices of location on land in the San Benito field, I do not remember how many locations I made. I think I first used it in making locations in Kern County in the Midway field in 1907. Posted notices of location on sections 20, 22, 26, 32 and 34 in 31-23; section 4 and the northeast quarter of section 9 in 32-23. I was interested at that time in the Empire Oil & Development Company and think about half the locations made in San Benito County under the Chicago powers of attorney were transferred to the Empire Oil & Development Company, of which I was the president and manager, but that company did not claim any interest in the locations made under such power of attorney in the Midway field in January, 1907.

No one that I knew of looked after the Chicago locations made in 1907 during that year. I was not on the land at any time during the year after the locations. I was there during the year 1908. I was there quite frequently after September, having the lands resurveyed, getting the proper locations. The prior surveys had been wrong, and we spent two or three months resurveying and locating lines and corners. Hoeppner, Harrison and Kay were assisting me in the matter. Do not remember that there was any particular arrangement with Harrison or Kay as to what they were to be paid if anything. Hoeppner had been of a great deal of assistance to me, in fact without him I never could have made the locations. I promised him he should have half of whatever I made out of the property, but there was nothing specific said about the Chicago locations; it was whatever we got out of the property irrespective of the locations or how the property was secured.

During the year 1908, did not call on the Chicago locators for any money for development or work upon the property. Hoeppner advanced whatever was necessary for expenses.

During the latter part of 1908, I learned, after consulting with Judge Clafin, my attorney, that the Chicago locations were defective because of an error in the names. I was negotiating a sale of the northeast quarter of section 9 to the Chanslor-Canfield Midway Oil Company when this error was discovered. It was after I had made the contract with Mrs. McLeod for

the development of the north half of thirty-two. I told McLeod of the defects in the location and in the power of attorney, sometime before January 1, 1909, and have a dim recollection of telling him that the matter would be adjusted satisfactorily. I was not present when any of the New York parties executed the power of attorney, but they were secured at my request.

I asked Searls, Thorn, Thickens and Powell to get the names in New York for me. I do not think the matter of securing the powers of attorney was mentioned to them until the day they were delivered for the purpose of securing the signatures. We had been discussing the financial condition of the Empire Oil & Development Company, and my inability to get back to California in time to get the powers of attorney signed there. I had to use them on the 1st of January, 1908, and I therefore asked Searls, Thorn, Thickens and Powell if they could get me thirty-two locators, and they said they could without any trouble. The powers of attorney were gotten for the purpose of relocating the San Benito lands, and if it proved profitable we would make some money out of it. I intended to use them on whatever vacant lands I could find which I thought was in the oil field in San Benito County, and I did use them for making locations in that county. I was not present when any of the parties executed the power of attorney and did not know but few if any of them. Did not make any locations in 1908, under the powers of attorney except those in San Benito County. The first use of the powers of attor-

ney in the Midway District in Kern County was January 1, 1909. I had determined to relocate the lands in section 32 in the names of the New York locators prior to January 1, 1909, but did not advise the Chicago locators, or have any communication with them in reference to the matter, nor did I advise the New York locators that I intended to use their names in making the location. I first so informed them in August, 1910.

I think all the property covered by the so-called Chicago locations in 1908 was relocated on January 1, 1909, in the names of the New York locators.

Was familiar with the work on the northwest quarter of section 32 prior to January 1, 1909. It was in charge of J. M. McLeod, under contract of October 8, 1908, with his wife. Sometime between January 2nd and January 6th, 1909, made a new arrangement with McLeod for the development of the property under the New York locations, along substantially the same lines as the previous contract with his wife. Subsequently and in May, 1909, McLeod asked me to make a new arrangement, a small change, I do not remember what it was. It seems to me though it was something in regard to getting the patent. He wanted to make some different arrangement in the agreement and asked me if I would make out a new one. I consented to do so and he surrendered the agreement that was made about the first of January and we entered into the contract of May 17th.

Did not advise the New York locators at any time between January 1, 1909, and May 17th, of that nor of the arrangement that I had made for the development of the property. Think I first commenced to negotiate for the sale to the Associated Oil Company in July, 1910, which negotiations finally resulted in the contract of August 4th of that year. I received \$5000.00 from the company at the time the contract was signed. The company demanded that I get ratification from the thirty-two locators, and as I did not have a great deal of money they agreed to advance \$5000.00 with the understanding that if I did not secure the ratifications I was to repay it. The Associated Oil Company and its attorney demanded that each one of the locators sign and execute the ratification in the form and as prepared by the attorney of the Oil Company. I went to New York in August, 1910, taking the ratifications with me, and saw some of the locators personally, but I do not remember the number. I explained to all I got to sign the ratification the deal with the Associated Oil Company and what the ratification meant, and none of them objected to signing the ratification. Paid each one \$250.00 through a check signed by Searls but with my money, which I had sent to Searls prior to leaving California for New York. The money did not come out of the contract with the Associated Oil Company but may have come from the sale of other locations which I had made in the name of the New York locators. During the time I was in New York, there was money deposited by the Asso-

ciated Oil Company in escrow in the Bank of California in pursuance to the agreement of August 4, 1910, which was subsequently paid to me.

I sold on behalf of the New York locators the west forty acres of the north hundred acres of the northwest quarter of section 32, to the Columbus Midway Company, and was to receive, I believe \$120,000.00 and actually received something over \$10,000. The company made default under the contract and the property was eventually conveyed to me by the company. I again visited New York in 1911, but had no communication between my visit in 1910 and that date, with any of the New York parties except Mr. Searls. In 1911, I went to New York to deliver the stock in the Pacific Oil Lands Company to the various New York locators. The Pacific Oil Lands Company was incorporated to take over the agreements between the locators and the Associated Oil Company and McLeod, and to pay for the same in stock of the company. After the assignment of the contract to the Pacific Oil Lands Company, the payments thereunder were made by the Associated Oil Company to the Pacific Company. I do not know that there was any particular reason for fixing the stock of the locators at one thousand shares, but I thought that is what they were entitled to and determined that question myself. I also determined the amount that should be paid to them in 1910 and 1911 for signing the ratification. I thought that was what they were entitled to, and I gave them the \$250.00 for all their title and interest in and to the

property under the locations. After getting the first receipt or release in full from the locators, it was necessary for me to use their names again in order to make transfer to the Pacific Oil Lands Company, and to obtain a further release I delivered to them a thousand shares of stock and got a final release. At the time the shares were delivered, some or all of the locators signed a paper acknowledging the receipt thereof "in full of all claims and demands growing out of a power of attorney given by me to him (McMurtry) of date December —— 1907". At the time the stock was delivered, I advised those to whom I made the delivery to keep their stock and not let it get out of their possession.

In January, 1909, I had a contract with McLeod in reference to the development of sections 20, 22, 36 and 34, covered by the New York locations, under which he was to put a derrick and well on each quarter. I first advised McLeod that I had relocated the property in the name of the New York locators about the 3rd of January, 1909. We met in Judge Claflin's office, and I remember that we discussed the matter of making out a new agreement under the New York locations. Judge Claflin told him that the locations made in 1907 had lapsed on the 31st day of December, 1908; that the property had been relocated and we would make a new agreement under the New York locations. When I went into Claflin's office, I told him that I had relocated the property. McLeod came in shortly and the judge told him then for the first time that section 32

had been relocated and, to use a mild expression, Mr. McLeod was a little peeved at the method we had taken in relocating the property, but wanted to know what position he was going to be put in: "How am I going to protect myself? How am I going to protect the people who have invested their money in here?" The judge told him to make out a new contract or a new agreement with the new locators, that we would not continue under the locations 1907, because positively we could not make a transfer, and there was no method that he knew to remedy the defect. At the time I made the locations in the names of the New York locators on January 1, 1909, I intended to permit the previous locations to lapse, and to make a new contract with McLeod. I did not say to Chadbourne at the time I asked him to get the powers of attorney in Chicago that I wanted thirty-two people to act as locators for my benefit, or men who would transfer to me any interest which they might acquire in the property. At the time I requested Thorn, Searls, Powell and Thickens to obtain powers of attorney for me in New York, I did not suggest to either of them to get any particular persons, nor individuals whom either they or I could influence or control at any time, in any way, in the event locations were made in their names.

It was a practice prevailing in California and had been for many years prior to 1909, for persons to make paper locations of supposed oil bearing lands, and then to look about to find some one with capital who would, for an interest in the property, develop and prove the

oil bearing character thereof. The lands in the Midway field in 1908 were barren, arid, undeveloped prospective oil properties.

At the time I made the locations in 1909, the nearest well to the property, producing oil, was the Scott well on the south half or near the center line of section 31, but it was not producing in paying quantities, and the next nearest well producing oil was the Oriental, about three miles away. The territory covered by the New York locations was wildcat territory and in an absolutely experimental stage. It was and is customary in California for the same set of people to locate in possible or probable oil fields or mining districts large areas or numerous tracts of land. I was not told by the parties who secured the New York powers of attorney that the persons executing them would at any time if requested so to do convey to me or anybody else in the name all or any part of the land which I might locate under the powers of attorney, and I never received any intimation or information that the land so located should belong to me in whole or in part, and there was never any such promise or agreement or understanding. It is and has been the custom in the oil district of California to deem land covered by paper locations upon which the so-called annual assessment work has not been done to be abandoned and released from the effect of the notice. For instance, under the notice posted January 1, 1907, or any time during the year 1907, the locators would have, according to the custom prevailing and duly recognized in the district, until the 31st of

December, 1908, in which to do \$100.00 worth of work on the property. In the event the work was not done, the rights under the location would lapse and the property would be open to relocation on the 1st of January, 1909. That was the custom in the field, and if you went out on the property and dug a trench, it did not make any difference what kind of a trench it was—four or five feet deep, or three or four or five feet long and four feet deep—and spent a hundred dollars on it, that constituted, in accordance with the custom of the district, one hundred dollars worth of work, and the locators' rights to the property were recognized by his neighbors and others.

I had no money during the years 1907 and 1908 with which to develop the property covered by the Chicago locations, and the locators did not advance nor offer to advance me any money for such purpose, and no work of any kind was done on any of the property, except the moving of some material on the northwest quarter of section 32 in the latter part of 1908.

I emphatically did not tell McLeod nor the California Midway Oil Company or anybody interested in the company or any contract for the development of section 32, prior to January, 1909, I was going to relocate the northwest quarter of the section in the name of the New York locators, for the reason that if I had they could have jumped the property or located it themselves. When I consulted Judge Claflin about the matter and asked him if there was any remedy, he said he did not know of any, but asked when the Chicago

locations would expire, and I told him in the 31st of December, 1908, and he said "You better arrange to relocate the property on the 1st of January, 1909". The first time McLeod knew of the new locations was at the interview in Claflin's office in the early part of January, 1909, and after they had been made. I watched the development on the northwest quarter of section 32, and had two reports thereon a week, because under the contract with McLeod, the work was to be for the benefit of the entire quarter section, and the locators whom I represented were interested in the north hundred acres thereof. From the time of my interview with McLeod in Claflin's office in January, 1909, and the making of the new contract I did not assert nor claim that any of the work done on the northwest quarter of the section after January 1, 1909, was made or done for the interest or benefit of the Chicago locators, and there was no purpose or intent to hold or claim the land for them. We considered that the Chicago locations were absolutely void and expired on the 31st of December, 1908, and of no effect because of error in the notices, and the fact that they were actually posted on the south half of the section and not on the property in question and as a matter of fact the contract of October, 1908, with McLeod was made concerning property on which no location notices had been posted, and the land was unlocated land as far as the Chicago locations were concerned. I never told the New York locators, nor authorized any one else to tell them, that I would give them any money or any

reward of any kind for signing the power of attorney, or because of the fact that they had signed it. At the time I obtained the New York powers of attorney I did not have in mind the location of any particular lands in the Midway field or the northwest quarter of section 32. At the time the transfer was made by me as attorney in fact for the New York locators to Claflin, and by Claflin to me individually I was indebted in a considerable sum for operations in the Midway field and had no security for the repayment to me of any money advanced or expended on behalf of the locations made in the names of the New York parties and my recollection of the transfer is that it was made for the purpose of convenience in handling the different agreements, in not having to sign the names of all the locators in event of any transfer or anything of that kind. That is the recollection I have of it now. I think the probabilities are that the suggestion of the transfer came from Claflin and I followed his advice, perhaps without asking him the reasons therefor. I did not claim to the Associated Oil Company in 1910 at the time of the negotiations or at any time that, by the conveyance to Claflin and from Claflin to me, I became the sole party in interest and that the New York locators did not have any right or claim to the property or the benefits to be derived therefrom, but I assured, and in fact told the parties that I was acting for the New York locators and in their behalf and so executed the instruments and deeds in that capacity. I had that in mind when I agreed that the holders of the apparent legal title would

execute declarations of trust that they held such title for and on behalf of the New York locators, and never remember making any statement or claim that I had any interest in the lands personally. The Associated Oil Company insisted upon a ratification from each of the thirty-two New York locators before it would pay the purchase price, and it retained a part thereof until the Darling estate had been administered and his interest in the locations obtained through the probate court. And in addition it insisted that deeds and conveyances or releases be obtained from Darling's legatees and heirs.

I admit that I made the statement to which my attention is called, as a witness in the case of United States v. Thirty-two Oil Company, in November, 1916, about the time I advised McLeod of the defects in the Chicago locations, and the arrangements we made about the relocation of the property, but I was in error in the statements. Before a witness is put in the stand, it is customary, I believe, for the attorney to talk the matter over with him, but that was not done in this instance. Here was a case where we went back from five to nine years—yes thirteen years—the attorney for the defense for whom I was supposed to be a witness never asked me one single question. I went on the stand in 1916 without preparation. I never had an opportunity to refresh my mind or anything in regard to any dates or anything connected with the property, and if there is any mistakes made, it is simply an error

in judgment or I had forgotten. I think it is a very simple thing for a man to forget. And again, I had the government of the United States on one side trying to prove the locators dummies, and an attorney on the other side who was trying to build up a case to sue me by the locators. Counsel on neither side had talked to me about the matter. There never was a time nor an occasion for me to use a dummy locator. It was something that had never occurred to me anywhere at any time. I never heard of such a thing until it was brought up about the time we were preparing to get the ratifications required by the contract with the Associated Oil Company. I had read of some timber cases where men had been employed to go out and locate lands for a consideration, and I appreciated that such an one was a dummy locator, but where a man had not received any money for the use of his name, if he was a bona fide citizen of the United States, I never realized that he was a dummy. That is the construction placed upon it by Mr. Hall and others in Washington connected with the government. One of the officials of the government criticised me for not giving the locators a larger amount of money. He said "If you had given him more money—if you had paid the locators more, why, then it would have looked different". Now, to my mind, whether you paid the locator for a location he made ten dollars or ten thousand dollars, really I could not see any difference.

The foregoing is a fair summary of the controlling facts in the case as admitted and shown by the evidence, as I understand them, and upon which the government makes practically three contentions, (1) that the New York locators were dummies or tools of McMurtry, and had no intention at the time they executed the powers of attorney that locations should be made for their benefit, but the powers of attorney were executed and delivered with the fraudulent purpose and intent on the part of the makers and McMurtry that they should be used in violation of the mining laws and to enable McMurtry to acquire for himself more mineral lands in one location than the laws permit. (2) That if the powers of attorney were in fact executed and delivered in good faith and for a lawful purpose, they were fraudulently used by McMurtry to make the locations for his individual benefit and not for his principals. (3) That the particular location in controversy in this suit was not made for the use and benefit of the named locators, but for the California Midway Oil Company, by enabling McMurtry to carry out his previous contract with Mrs. McLeod and others, under which it claims.

The first two questions may be considered together as they are governed by the same principles. There is so far no law of Congress or regulations made in pursuance thereof limiting the number of placer mining claims an individual or association of individuals may make. On the contrary, the policy of the government seems to be to encourage the development of its min-

eral resources and to offer every facility for that purpose. To that end the law declares that all valuable mineral deposits in lands belonging to the United States are to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law and according to the local customs or rules of miners in the several mining districts so far as applicable, and not inconsistent with the laws of the United States. (R. S. 2319.) Fraud or wrongdoing therefore is not to be inferred or imputed in this case solely because of the number of locations made. The right to possess or acquire mineral lands, however, is a privilege granted by Congress and can only be exercised within the limits prescribed in the grant. The law provides that no mining claim shall exceed twenty acres for an individual (Sec. 2331 R. S.) or one hundred and sixty acres for an association of eight persons (Sec. 2330 R. S.). Any device therefore whereby one person is to acquire more than twenty acres, or an association more than one hundred and sixty acres by one location is a violation of law, a fraud upon the government and without legal support. (*U. S. v. Brookshire Oil Co.*, 242 Fed. 718.)

It is the government's position in this case that it was the intention of the makers of the powers of attorney and of McMurtry to circumvent the law by permitting McMurtry to secure the location of more than twenty acres in one claim, and that there was in effect,

a conspiracy between McMurtry and the makers of the powers of attorney to violate the statute.

The question thus presented is one of fraud. There are certain well settled rules to guide the court in determining such an issue. Fraud is never presumed but must be established by clear, unequivocal and convincing proof. Proof which merely creates suspicion is not enough. "Fraud is not presumed" says Judge Story. "It must be clearly established. Suspicion is not enough. The balance of the testimony is not to be nicely weighed." (*Sanborn v. Stetson*, 21 Fed Cases 315.) And the Supreme Court of the United States says that "while certain circumstances will give rise to an inference of fraud, yet the law never presumes it. It devolves upon him who alleges fraud to show the same by satisfactory proof. The law presumes in the absence of evidence to the contrary that the business transactions of every man are done in good faith and for an honest purpose; and any one who alleges that such acts are done in bad faith or for a dishonest and fraudulent purpose takes upon himself the business of showing the same." (*Jones v. Simpson*, 116 U. S. 615.) If the circumstances proven are just as consistent with honesty and good faith as with fraudulent intent the inference of fraud is not warranted. In short, where two inferences can be drawn from proven facts, one in favor of fair dealing and good faith and the other of a corrupt motive, it is the duty of the trier of fact to draw the inference favorable to good faith and fair dealing. (*In re Hawkes*, 204 Fed. 316; *Ryder v. Bam-*

burger, 172 Cal. 797; 158 Pac. 753.) It is, of course, not essential that fraud be established by direct and positive proof for that is often impossible. The circumstances proven may be sufficient to warrant a finding of fraud but in such case the evidence must be of such a nature as to be convincing and inconsistent with the presumption of honesty.

I am of the opinion that the government has not established the fraud charged within these rules. There are certainly two inferences which can be drawn from the testimony, one of which is in favor of good faith on the part of all parties concerned at the time the powers of attorney were executed and the locations made, and that is the crucial question in the case.

The evidence of the New York locators as well as that of McMurtry and his associates is clear that there was no expressed understanding or agreement at the time the powers of attorney were executed, or prior thereto or at any time, that they should be used for McMurtry for a fraudulent purpose or for any purpose other than to make, develop and dispose of mining locations for the use and benefit of the locators, and in my judgment such understanding is not to be inferred from the circumstances. But few if any of the signers knew McMurtry by sight or had any communication with him about the matter. They executed the powers of attorney at the request of either Thorn, Thickens or Powell, in whom they had the utmost confidence, and upon whose representations they relied in so doing. They were led to believe that McMurtry was an honest man

familiar with the mining laws, and that he intended to make locations for them in their names if he could find property open to entry. It is true they were not familiar with the mining laws and made no particular inquiry concerning same, nor after executing powers of attorney did they manifest any particular interest in what had been done, if anything, thereunder, but signed such papers and receipts, and accepted such sums of money as were presented and paid to them from time to time. All this may well have been because of their confidence in their principal and his associates, and reliance upon the statements and representations made to them.

The fact that their confidence was misplaced does not render their acts fraudulent and although McMurtry's conduct subsequent to the locations was not such as should have characterized the relations between a principal and his agent, he nevertheless at all times up to and for some time after the sale to the Associated Oil Company, and notwithstanding the endorsements on the checks and the other papers executed by the locators, treated them as the owners of the locations and dealt with them and the property as such. All contracts and conveyances made by him were made and executed in the name and for and on behalf of his principals. He recognized their rights or claim to the property by from time to time seeking and obtaining releases and acquittances from them, and by causing to be issued to them stock in the Pacific Oil Lands Company, the holding corporation, and obtaining their consent to the corpor-

ate meetings and distribution of dividends therein. In July, 1910, he freely acknowledged that notwithstanding previous conveyances made by and to him the property was in fact held in trust by the grantees for the locators, and was willing to execute and have executed declarations to that effect. In making the locations and subsequent contracts in reference thereto, the fair conclusion from the evidence in my judgment is that McMurtry was acting for and on behalf of his principals and with no intention at that time of fraudulently acquiring the land or the proceeds thereof for himself. It was not until it became apparent that a large sum of money could be realized from the transaction that his avarice or cupidity seems to have influenced him to appropriate to his own use the bulk thereof without accounting to his principals, and in violation of his trust. Clearly his conduct after location and discovery and sale of the property, however wrongful it may be, cannot relate back to and characterize as fraudulent the execution of the powers of attorney or the locations made thereunder. Evidence in relation thereto was only admissible and can only be considered insofar as it tends to establish a fraudulent purpose at the time of the locations. (*U. S. v. Kettenbach*, 208 Fed. 209.) The locations were either fraudulent at the time they were made or not at all, and it is to that question the inquiry is to be confined. The law permits locations of mining claims in the names of persons not present. (*Moore v. Hamerslag*, 41 Pac. 805). When so made all the right or title any one can acquire by the location

vests in the persons located. The interest, whatever it is, thus acquired becomes theirs to dispose of as they please. (*Whiting v. Straup*, 95 Pac. 854). When therefor a location was made by McMurtry in the name of his New York principals they became immediately vested with whatever right or title such location gave, in the absence of fraud or bad faith, and such title was not changed or rendered fraudulent by the subsequent failure of McMurtry to account to them for the proceeds of the property disposed of by him under his power of attorney, or by any secret or undisclosed purpose he may have had with reference thereto.

I conclude therefore that upon the first two points the findings must be for the defendants.

Nor in my judgment is the claim that the particular location in controversy in this suit was for the benefit of the California Midway Oil Company, by enabling McMurtry to comply with his previous contract with Mrs. McLeod and others sustained by the testimony. The same question was raised in *United States vs. Thirty-Two Oil Company* (242 Fed. 730) involving the southeast quarter of section Thirty-two. The case was decided on another point but in the opinion it is said (P733) that "there can be no question from the evidence but what the alleged locations made in 1909 were not for the use and benefit of the named locators, but to enable McMurtry to consummate and carry out the provisions of a contract made by him with McLeod and others for the disposal of the property as heretofore stated." This observation was not necessary to

the decision. It was, however, based upon the undisputed evidence in the then pending case, in which McMurry testified to the effect stated, but in the instance case his testimony is that since the trial of the former case he has verified his recollection of the matter from accessible data and that he was in error in his former testimony. That as a matter of fact the locations were not made to enable him to carry out his previous contract but because of an intention on his part to abandon the former locations and make new ones in the name of and for his New York principals, and neither the California Midway Oil Company or McLeod or his associates knew that the land was to be relocated until after the location had been made, and in this he is corroborated in the testimony of McLeod and others.

So that upon the record as it now stands and upon the testimony in the present case, it appears that the locations made in 1909 were for the use and benefit of the New York locators, and not for the purpose of enabling McMurry to consummate a previous contract made by him as attorney in fact for the Chicago locators. The so-called Chicago locations of the property in controversy was but a paper location. No discovery had been made thereunder and no work done upon the property except the moving of some material thereon by the California Midway Company, and therefore no right as against the government had vested in the locators. The property was still open to peaceable relocation, so that when McMurry, acting as attorney in fact for the Chicago locators, abandoned their loca-

tion and relocated in the name of the New York principals, the latter became, from the date of such locations, entitled to whatever rights were thus acquired, and that was the right to explore for valuable mineral deposit therein and to be protected while working towards discovery from forcible, fraudulent, surreptitious or clandestine intrusion upon their possession. (Union Oil Co. vs. Smith, S. C. March 31, 1910. Consolidated Mutual Oil, et al., vs. United States, 245 Fed. 524.)

Bill of complaint is therefore dismissed.

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

VS.

CALIFORNIA MIDWAY OIL COM-
PANY, ASSOCIATED OIL COM-
PANY, COLUMBUS MIDWAY OIL
COMPANY, THIRTY-TWO OIL COM-
PANY, L. B. McMURTRY, J. M.
McLEOD and STANDARD OIL COM-
PANY,

Appellees.

REPLY BRIEF FOR THE UNITED STATES

RAYMOND BENJAMIN,

CHARLES D. HAMEL,

*Special Assistants to the Attorney General,
Solicitors for Appellant.*

No. 3682

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For the Ninth Circuit

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REPLY BRIEF FOR THE UNITED STATES

We desire to consider in this reply the contention of appellees under the heading IV, beginning on page 33 of their brief.

It is contended by counsel that it does not affirmatively appear from the record that all of the testimony upon which the decree was based is before this Court. The following stipulation was signed by counsel for all parties:

Stipulation Re Statement of Evidence on Appeal.

It is hereby stipulated and agreed that the statement of evidence lodged by the plaintiff, United States of America, with the clerk of the above-entitled Court on the 18th day of August, 1920, may be approved by the Court or the Judge as the statement of evidence to be included in the transcript on appeal taken by said plaintiff in the above-entitled and numbered cause to the United States Circuit Court of Appeals.

Dated April 4th, 1921. (R. 116-117.)

This stipulation was filed April 22, 1921 (R. 117). Based upon this stipulation the following certificate was signed by the Court:

Certificate of Judge to Statement of Evidence.

It appearing that the foregoing statement of the evidence to be included in the record on appeal to the Circuit Court of Appeals for the Ninth Circuit is full, true, complete and properly prepared pursuant to stipulation filed herein this day, the same is hereby approved.

Dated April 22, 1920.

BLEDSON,

Judge. (R. 929.)

The certificate of the Clerk of the District Court to the transcript, in so far as it is of importance here, reads as follows:

I, CHAS. N. WILLIAMS, Clerk of the District Court of the United States of America,

in and for the Southern District of California, do hereby certify the foregoing eight hundred and four (804) typewritten pages, numbered from 1 to 804, inclusive, and comprised in one volume to be a full, true and correct copy of the amended bill of complaint, answer of defendant California Midway Oil Company, answer of defendants 32 Oil Company and J. M. McLeod, answer of defendant L. B. McMurtry, decree of dismissal, petition for appeal, assignment of errors, order allowing appeal, stipulation re statement of evidence, statement of evidence and praecipe for transcript in the above and therein entitled cause, and that the same together constitute the record in said cause, as specified in the said praecipe, filed in my office on behalf of the United States of America, plaintiff and appellant, by its attorneys of record, with the exception of the answer of defendant Columbus Midway Oil Company, which is specified in said praecipe, but which was not filed in the above entitled action. I further certify that the original citation on appeal is hereto attached and made a part of said record. (R. 931-932.)

This certificate is dated April 30, 1921.

The practice is usual for the parties or their attorneys to stipulate what the transcript shall contain. A consent that the bill of exceptions be settled has been construed as a written stipulation that the document contains a sufficient transcript of the evidence and proceedings below (*Dodge v. Norlin*, 133 Fed. 363, 369). The Court, based upon the

stipulation, certified that the “foregoing statement of the evidence is “full, true, complete and properly prepared.” It has been held that a certificate that the “foregoing is a true, full and complete record in the above entitled cause” is sufficient (*Pennsylvania Co. v. Jacksonville T. & K. W. Ry. Co.*, 55 Fed. 131, 132).

The Clerk certified the record to be a “full, true and correct copy of the * * * stipulation re statement of evidence, statement of evidence and praecipe for transcript in the above and therein entitled cause.” Based on such a showing counsel states that “it is clear that it does not affirmatively appear in this record that the statement of the evidence contains all of the evidence upon which the lower court based its decree” (Appellees’ Brief, p. 35).

Equity Rule 76 provides that if in the transcript anything material to either party be omitted by accident or error the appellate court, on a proper suggestion or its own motion, may direct that the omission be corrected by a supplemental transcript. Such a suggestion or application, made within a reasonable time after the record is printed, will usually be granted (*Bein v. Heath*, 142 U. S. 704, 35 L. Ed. 1174). No such suggestion or application has ever been made here. There is nothing in the record to indicate that the statement of the evidence is not full, true and complete. So far as the record itself is concerned, it shows upon its face that it is

full, true and complete. The cases cited by counsel are not in point because they are all cases where it was apparent from the face of the record that all of the evidence was not in the record.

It is also stated by counsel:

Nor does it affirmatively appear that the statement of the evidence in this record is the statement that was lodged with the clerk on August 18, 1920, the statement which counsel for the respective parties stipulated could be used. (Appellees' Brief, p. 35.)

The stipulation of April 4, 1921, specifically refers to the statement of evidence lodged with the Clerk on the 18th of August, 1920. The certificate of the Judge makes specific reference to the stipulation, and the use of the word "foregoing" in the certificate shows that it was attached to the statement lodged with the Clerk on the 18th of August, 1920. The inclusion by the Clerk of the certificate of the Judge in the record shows affirmatively that the statement of the evidence in this record is the statement that was lodged with the Clerk on August 18, 1920. Unless there is a showing to the contrary, it is to be presumed that the "statement of evidence" referred to in the certificate of the Clerk is the statement lodged with him on August 18, 1920. If it can be shown that the statement of the evidence in the record is not the statement lodged with the Clerk on August 18, 1920, then it is the duty of counsel to do so.

Counsel not having availed themselves of the opportunity offered by Equity Rule 76, and not having shown that the statement of the evidence in the record is not the statement lodged with the Clerk on August 18, 1920, it is to be presumed that the record before this Court contains all of the testimony upon which the decree was based.

Respectfully submitted,

RAYMOND BENJAMIN,

CHARLES D. HAMEL,

*Special Assistants to the Attorney General,
Solicitors for Appellant.*



